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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66648; File No. SR-NASDAQ-2012-013)

March 23, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of Listing Standards for Certain Securities

I. Introduction

On January 20, 2012, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt rules applicable to the qualification, listing, trading, and delisting of certain securities on NASDAQ. The proposed rule change was published for comment in the Federal Register on February 9, 2012.³ The Commission received no comments on the proposal. On March 21, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66320 (February 3, 2012), 77 FR 6833 (“Notice”).

⁴ In Amendment No. 1, consistent with its proposal to conform the continued listing requirements applicable to Equity Index-Linked Securities and Commodity-Linked Securities to those of another national securities exchange and to incorporate such requirements under proposed Rules 5710(k)(i)(B) and (k)(ii)(B), NASDAQ proposes to delete existing references to continued listing standards applicable to Linked Securities (as defined herein) in Rule 5730(b). In addition, in Amendment No. 1, NASDAQ proposes to incorporate additional rule requirements relating to information dissemination applicable to Index-Linked Exchangeable Notes in order to conform its proposal with the listing requirements for Index-Linked Exchangeable Notes of another national securities exchange. This technical amendment does not require notice and comment as it did not materially affect the substance of the rule filing or raise any unique or novel regulatory issues.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt rules applicable to the qualification, listing, trading, and delisting on NASDAQ (“Listing Rules”) of certain securities. Specifically, NASDAQ proposes to amend Rule 5710 (“Securities Linked to the Performance of Indexes and Commodities (Including Currencies)”) to: (i) incorporate generic continued listing standards for Equity Index-Linked Securities and Commodity-Linked Securities (collectively, “Existing Linked Securities”) under Rule 5710;⁵ (ii) adopt initial and continued generic listing standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities (collectively, “Additional Linked Securities,” and together with the Existing Linked Securities, “Linked Securities”);⁶ (iii) revise the introductory paragraph to incorporate references to, and provide descriptions of, the Additional Linked Securities;⁷ (iv) revise the paragraph of Rule 5710 relating to trading halts to clarify that it applies to all Linked Securities;⁸ (v) adopt Commentary .01 relating to obligations of Market Makers in Linked Securities;⁹ and (vi) correct cross references and conform defined terms. In addition, NASDAQ proposes new Rule 5711 (“Trading of Certain Derivative Securities”) to adopt initial and continued listing criteria for the

⁵ NASDAQ Rules 5710(g) and (h) currently include initial listing standards applicable to the Existing Linked Securities. NASDAQ proposes to move the existing rule text in Rules 5710(g) and (h) to proposed Rule 5710(k)(i)(A) and (k)(ii)(A), respectively. In addition, NASDAQ Rule 5730(b) currently includes continued listing standards applicable to Existing Linked Securities. NASDAQ proposes to conform the continued listing requirements applicable to the Existing Linked Securities to those of another national securities exchange, to incorporate such requirements under proposed Rules 5710(k)(i)(B) and (k)(ii)(B), and to delete references in Rule 5730(b) to Existing Linked Securities. See supra note 4.

⁶ See proposed Rules 5710(k)(iii) – (v).

⁷ See introductory paragraphs to Rule 5710, as proposed to be amended.

⁸ See proposed Rule 5710(h) (formerly Rule 5710(j)).

⁹ See proposed Commentary .01 to Rule 5710.

following securities: Index-Linked Exchangeable Notes; Equity Gold Shares; Trust Certificates; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Trust Units; Managed Trust Securities; and Currency Warrants (together with the Linked Securities, collectively, the “Subject Securities”).¹⁰ The proposed Listing Rules are based on, and are substantially similar to, the listing standards of NYSE Arca, Inc. (“NYSE Arca”) for the listing and trading of the Subject Securities.

A. Proposed Amendments to Rule 5710 (“Securities Linked to the Performance of Indexes and Commodities (Including Currencies)”)

NASDAQ has proposed to amend the introductory paragraphs of Rule 5710 to state that NASDAQ will consider for listing and trading Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities that in each case meet the applicable criteria of Rule 5710. In addition, the Exchange has proposed to amend the introductory paragraph to provide definitions for “Equity Reference Asset” and “Commodity Reference Asset,” which refer to the basis for payment at maturity for Equity Index-Linked Securities and Commodity-Linked Securities, respectively. NASDAQ has further proposed to amend the introductory paragraph to describe the basis for payment at maturity for each of the Additional Linked Securities as follows:

- The payment at maturity with respect to Fixed Income Index-Linked Securities is based on the performance of one or more indexes or portfolios of notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored

¹⁰ The Exchange has proposed to adopt generic listing standards for Linked Securities and Index-Linked Exchangeable Notes, both generic and non-generic listing standards for Currency Trust Shares, and non-generic listing standards for all other Subject Securities.

entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (“Fixed Income Reference Asset”).

- The payment at maturity with respect to Futures-Linked Securities is based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) Futures (“Futures Reference Asset”).
- The payment at maturity with respect to Multifactor Index-Linked Securities is based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Fixed Income Reference Assets or Futures Reference Assets (“Multifactor Reference Asset,” and together with Equity Reference Assets, Commodity Reference Assets, Fixed Income Reference Assets and Futures Reference Assets, “Reference Assets”). A Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates.

Based on NASDAQ’s proposed amendments to the introductory paragraphs of Rule 5710, the definition of “Linked Securities” in Rule 5710 would now encompass the Additional Linked Securities. Therefore, under NASDAQ’s proposal, all provisions of Rule 5710 that apply

to Linked Securities would now apply to the Additional Linked Securities as well.

As stated in the introductory paragraphs to Rule 5710, NASDAQ may consider for listing and trading pursuant to Rule 19b-4(e) under the Act Linked Securities (including the Additional Linked Securities) that meet the standards set forth in Rule 5710, and NASDAQ may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities (including the Additional Linked Securities) that do not otherwise meet the standards set forth in Rule 5710.

NASDAQ is not proposing any amendments to Rules 5710(a) - (f), and such provisions would apply to all Linked Securities (including the Additional Linked Securities).¹¹ NASDAQ has proposed to delete current Rules 5710(g) and (h) (which contain the initial listing standards for Equity Index-Linked Securities and Commodity-Linked Securities) and move the text of

¹¹ Rules 5710(a) - (f) set forth the following requirements:

(a) Both the issue and the issuer of such security meet the criteria for other securities set forth in Rule 5730(a), except that if the security is traded in \$1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required.

(b) The issue has a term of not less than one (1) year and not greater than thirty (30) years.

(c) The issue must be the non-convertible debt of the Company.

(d) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset.

(e) The Company will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in Rule 5405(b)(1)(A). In the alternative, the Company will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to exceed by at least 20% the earnings requirement set forth in Rule 5405(b)(1)(A), and (ii) not to have issued securities where the original issue price of all the Company's other index-linked note offerings (combined with index-linked note offerings of the Company's affiliates) listed on a national securities exchange exceeds 25% of the Company's net worth.

(f) The Company is in compliance with Rule 10A-3 under the Act.

these two paragraphs to proposed Rules 5710(k)(i)(A) and (k)(ii)(A).¹² NASDAQ has proposed to re-number the remaining existing paragraphs of Rule 5710 to reflect the deletion of paragraphs (g) and (h). NASDAQ has proposed to update cross references throughout the existing rule text of 5710 to reflect this reorganization and renumbering, and to reflect the addition of paragraph (k) to Rule 5710 (described below).

NASDAQ is not proposing any substantive amendments to Rules 5710(i), (k), or (l), and under the proposal, such paragraphs would be renumbered as paragraphs (g), (i), and (j), respectively. Such paragraphs would apply to all Linked Securities (including the Additional Linked Securities), unless otherwise noted therein.¹³

¹² See supra note 5.

¹³ Proposed Rules 5710(g), (i) and (j) provide as follows:

(g) Maintenance and Dissemination – (i) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “firewall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (ii) Unless the Commission order applicable under paragraph (k) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15 seconds during NASDAQ’s regular market session, except as provided in the next clause (iii). (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (iv) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph (g) applies to the composite value of such indexes. (v) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during NASDAQ’s regular market session.

(i) Surveillance Procedures. FINRA will implement on behalf of Nasdaq written surveillance procedures for Linked Securities. Nasdaq will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

NASDAQ has proposed to amend the current rule text relating to trading halts in Linked Securities¹⁴ to remove references to “Commodity-Linked Securities” and “Equity Index-Linked Securities” in order to make the paragraph applicable to all Linked Securities (including the Additional Linked Securities).¹⁵

As discussed above, NASDAQ has proposed to move the initial listing standards for Equity Index-Linked Securities and Commodity-Linked Securities (previously in Rules 5710(g) and (h)) to new paragraph (k). New paragraph (k) of Rule 5710 would also set forth the continued listing standards for Equity Index-Linked Securities and Commodity-Linked Securities and both initial and continued listing standards for the Additional Linked Securities (as further described below).¹⁶

Finally, NASDAQ has proposed to add Commentary .01 to Rule 5710, which would establish certain regulatory requirements for registered Market Makers in Linked Securities. Specifically, registered Market Makers in Linked Securities would be required to file with NASDAQ, in a manner prescribed by NASDAQ, and keep current a list identifying all accounts for trading in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the

(j) Linked Securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, Linked Securities shall be deemed and treated as Other Securities.

¹⁴ See proposed Rule 5710(h) (formerly Rule 5710(j)).

¹⁵ Proposed Rule 5701(h) provides as follows:

(h) Trading Halts. In the case of Linked Securities, if the indicative value (if required to be disseminated) or the Reference Asset value is not being disseminated as required, or if the value of the index is not being disseminated as required, Nasdaq may halt trading during the day on which such interruption occurs. Nasdaq will halt trading no later than the beginning of trading following the trading day when the interruption commenced if such interruption persists at this time.

¹⁶ See supra notes 4 and 5.

Reference Asset or based on any Reference Asset component or any physical commodity, currency or futures underlying a Reference Asset component, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in Linked Securities would be permitted to trade in the Reference Asset components, the commodities, currencies, or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity or futures currency underlying a Reference Asset component, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to NASDAQ as required by the proposed Rule.¹⁷

In addition to the existing obligations under NASDAQ rules regarding the production of books and records,¹⁸ proposed Commentary .01(b) would further require registered Market Makers in Linked Securities to make available to NASDAQ such books, records, or other information pertaining to transactions by such entity or any limited partner, officer, or approved person thereof, registered or nonregistered employee affiliated with such entity for its or their own accounts in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, currency or futures underlying a Reference Asset component, as may be requested by NASDAQ.

Proposed Commentary .01 to Rule 5710 is based on, and is substantively identical to, Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) (“Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked

¹⁷ See proposed Commentary .01(a) to Rule 5710.

¹⁸ See, e.g., NASDAQ Rule 4625.

Securities, Futures-Linked Securities and Multifactor Index-Linked Securities”).

1. Equity Index-Linked Securities

Proposed Rule 5710(k)(i)(A) would set forth the initial listing criteria for Equity Index-Linked Securities, which are currently found in Rule 5710(g).¹⁹ NASDAQ has not proposed any substantive changes to its initial listing criteria for Equity Index-Linked Securities.²⁰

¹⁹ As discussed above, Rule 5710(g) would be deleted and replaced in its entirety by proposed Rule 5710(k)(i)(A).

²⁰ Proposed Rule 5710(k)(i)(A) (formerly Rule 5710(g)) provides as follows:

(A) In the case of an Equity Index-Linked Security, each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either:

(1) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission’s approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or

(2) the index or indexes meet the following criteria:

(a) Each component security has a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;

(b) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(c) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least semiannually;

(d) In the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(e) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

Proposed Rule 5710(k)(i)(B) would contain continued listing standards for Equity Index-Linked Securities. Under the proposal, NASDAQ would commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security), if any of the initial listing standards are not continuously maintained, except that: (i) the criteria that no single component represent more than 25% of the dollar weight of the index and the five highest dollar weighted components in the index cannot represent more than 50% (or 60% for indexes with less than 25 components) of the dollar weight of the index, need only be satisfied at the time the index is rebalanced; and (ii) component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 500,000 shares, or minimum global notional volume traded per month of \$12,500,000, averaged over the last six months.²¹

In connection with an Equity Index-Linked Security that is listed pursuant to proposed Rule 5710(k)(i)(A)(1), NASDAQ would commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security) if

(f) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association, provided, however, that an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components; and

(g) All component securities shall be either (A) securities (other than securities of a foreign issuer and American Depositary Receipts ("ADRs")) that are (i) issued by a 1934 Act reporting company or by an investment company registered under the Investment Company Act of 1940 that, in each case, has securities listed on a national securities exchange and (ii) an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Act), or (B) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of the Intermarket Surveillance Group ("ISG") or a party to a comprehensive surveillance sharing agreement with Nasdaq will not in the aggregate represent more than 20% of the dollar weight of the index.

²¹ See proposed Rule 5710(k)(i)(B)(1).

an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.²²

Additionally, NASDAQ would commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security), under any of the following circumstances:

- if the aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than \$400,000;
- if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on NASDAQ (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout NASDAQ trading hours; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.²³

Finally, the proposed rule provides that indexes underlying Equity Index-Linked

²² See proposed Rule 5710(k)(i)(B)(2).

²³ See proposed Rule 5710(k)(i)(B)(3).

Securities would be rebalanced at least annually.²⁴

The proposed continued listing criteria for Equity Index-Linked Securities are based on, and substantively identical to, NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2) (“Equity Index-Linked Securities Listing Standards – Continued Listing Criteria”).²⁵

2. Commodity-Linked Securities

Proposed Rule 5710(k)(ii)(A) would set forth the initial listing criteria for Commodity-Linked Securities, which are currently found in Rule 5710(h).²⁶ NASDAQ has not proposed any substantive changes to its initial listing criteria for Commodity-Linked Securities.²⁷

²⁴ See proposed Rule 5710(k)(i)(B)(4).

²⁵ Consistent with its proposal to conform the continued listing requirements applicable to Equity Index-Linked Securities to those of NYSE Arca and to incorporate such requirements under proposed Rule 5710(k)(i)(B), NASDAQ has proposed to delete existing references to continued listing standards applicable to Equity Index-Linked Securities in Rule 5730(b). See *supra* notes 4 and 5.

²⁶ As discussed above, Rule 5710(h) would be deleted and replaced in its entirety by proposed Rule 5710(k)(ii)(A).

²⁷ Proposed Rule 5710(k)(ii)(A) (formerly Rule 5710(h)) provides as follows:

(A) In the case of a Commodity-Linked Security, the Reference Asset shall meet the criteria in either subparagraph (1) or subparagraph (2) below:

(1) The Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission’s approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.

(2) The pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an ISG member or affiliate or with which Nasdaq has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either: (1) the generally accepted spot price for the currency exchange rate in question; or (2) derived from a market of which (a) is an ISG member or affiliate or with which Nasdaq has a comprehensive surveillance sharing agreement and (b) is the pricing source for a currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such

Proposed Rule 5710(k)(ii)(B) would establish new continued listing standards for Commodity-Linked Securities. NASDAQ would commence delisting or removal proceedings if any of the initial listing criteria are not continuously maintained.²⁸ Additionally, NASDAQ would commence delisting or removal proceedings under any of the following circumstances:

- if the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than \$400,000;
- if the value of the Commodity Reference Asset is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of the proposed rule; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.²⁹

The proposed continued listing standards for Commodity-Linked Securities are based on, and substantively identical to, NYSE Arca Equities Rule 5.2(j)(6)(B)(II)(2) (“Commodity-Linked Securities Listing Standards”).³⁰

3. Fixed Income Index-Linked Securities

Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (2), provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Reference Asset. The term “Currency,” as used in this subparagraph, shall mean one or more currencies, or currency options, futures, or other currency derivatives, Commodity-Related Securities if their underlying Commodities are currencies or currency derivatives, or a basket or index of any of the foregoing.

²⁸ See proposed Rule 5710(k)(ii)(B)(1).

²⁹ See proposed Rule 5710(k)(ii)(B)(2).

³⁰ Consistent with its proposal to conform the continued listing requirements applicable to Commodity-Linked Securities to those of NYSE Arca and to incorporate such requirements under proposed Rule 5710(k)(ii)(B), NASDAQ has proposed to delete existing references to continued listing standards applicable to Commodity-Linked Securities in Rule 5730(b). See *supra* notes 4 and 5.

Proposed Rule 5710(k)(iii) would establish initial and continued listing standards for Fixed Income Index-Linked Securities.

Proposed Rule 5710(k)(iii)(A) provides that either: (i) the Fixed Income Reference Asset to which the security is linked shall have been reviewed and approved for the trading of options, Index Fund Shares, or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) the issue must meet the following initial listing criteria:

- components of the Fixed Income Reference Asset that in the aggregate account for at least 75% of the weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of \$100 million or more;
- a component of the Fixed Income Reference Asset may be a convertible security; however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;
- no component of the Fixed Income Reference Asset (excluding Treasury Securities and GSE Securities) will represent more than 30% of the dollar weight of the Fixed Income Reference Asset, and the five highest dollar weighted components in the Fixed Income Reference Asset will not in the aggregate account for more than 65% of the dollar weight of the Fixed Income Reference Asset;
- an underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
- component securities that in the aggregate account for at least 90% of the dollar

weight of the Fixed Income Reference Asset must be from one of the following:

(a) issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; or (b) issuers that have a worldwide market value of outstanding common equity held by non-affiliates of \$700 million or more; or (c) issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; or (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) issuers that are a government of a foreign country or a political subdivision of a foreign country.

In addition, the value of the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day.³¹

Proposed Rule 5710(k)(iii)(C) provides that NASDAQ would commence delisting or removal proceedings if any of the initial listing criteria are not continuously maintained, and that NASDAQ would also commence delisting or removal proceedings if:

- the aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than \$400,000;
- the value of the Fixed Income Reference Asset is no longer calculated or available and a new Fixed Income Reference Asset is substituted, unless the new Fixed Income Reference Asset meets the requirements of proposed Rule 5710(k); or
- such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings inadvisable.

The proposed initial and continued listing standards for Fixed-Income Linked Securities

³¹ See proposed Rule 5710(k)(iii)(B).

are based on, and substantively identical to, NYSE Arca Equities Rule 5.2(j)(6)(B)(IV) (“Fixed Income Index-Linked Securities Listing Standards”).

4. Futures-Linked Securities

Proposed Rule 5710(k)(iv) would establish initial and continued listing standards for Futures-Linked Securities. Proposed Rule 5710(k)(iv)(A) states that the issue must meet one of the following initial listing standards:

- the Futures Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Futures-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission’s approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- the pricing information for components of a Futures Reference Asset must be derived from a market which is a member, or an affiliate of a member, of the Intermarket Surveillance Group (“ISG”), or with which NASDAQ has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the foregoing requirement; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, the issue must meet both of the following initial listing criteria:

- the value of the Futures Reference Asset must be calculated and widely

disseminated by one or more major market data vendors on at least a 15-second basis during the Regular Market Session (as defined in NASDAQ Rule 4120); and

- in the case of Futures-Linked Securities that are periodically redeemable, the Intraday Indicative Value³² of the subject Futures-Linked Securities must be calculated and widely disseminated by NASDAQ or one or more major market data vendors on at least a 15-second basis during the Regular Market Session.³³

Proposed Rule 5710(k)(iv)(C) states that NASDAQ would commence delisting or removal proceedings if any of the initial listing criteria are not continuously maintained, and that NASDAQ would also commence delisting or removal proceedings under any of the following circumstances:

- if the aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than \$400,000;
- if the value of the Futures Reference Asset is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of proposed Rule 5710(k); or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

The proposed initial and continued listing standards for Futures-Linked Securities are based on, and substantively identical to, NYSE Arca Equities Rule 5.2(j)(6)(B)(V) (“Futures-Linked Securities Listing Standards”).

5. Multifactor Index-Linked Securities

³² The “Intraday Indicative Value” is an estimate of the value of a share of each series of a particular security.

³³ See proposed Rule 5710(k)(iv)(B).

Proposed Rule 5710(k)(v) would establish initial and continued listing standards for Multifactor Index-Linked Securities. Proposed Rule 5710(k)(v)(A) states that the issue must meet one of the following initial listing standards:

- each component of the Multifactor Reference Asset to which the security is linked shall have been reviewed and approved for the trading of either options, Index Fund Shares, or other derivatives under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or
- each Reference Asset included in the Multifactor Reference Asset must meet the applicable initial and continued listing criteria set forth in the relevant subsection of proposed Rule 5710(k).

In addition, proposed Rule 5710(k)(v)(B) provides that the issue must meet both of the following additional initial listing criteria:

- the value of the Multifactor Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Multifactor Index-Linked Security trades on NASDAQ; and
- in the case of Multifactor Index-Linked Securities that are periodically redeemable, the Intraday Indicative Value of the Multifactor Index-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Multifactor Index-Linked Securities trade on NASDAQ.

Proposed Rule 5710(k)(v)(C) states that NASDAQ would commence delisting or removal proceedings if:

- any of the initial listing criteria described above are not continuously maintained;
- the aggregate market value or the principal amount of the Multifactor Index-Linked Securities publicly held is less than \$400,000;
- the value of the Multifactor Reference Asset is no longer calculated or available and a new Multifactor Reference Asset is substituted, unless the new Multifactor Reference Asset meets the requirements of proposed Rule 5710(k); or
- such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

The proposed initial and continued listing standards for Multifactor Index-Linked Securities are based on, and substantively identical to, NYSE Arca Equities Rule 5.2(j)(6)(B)(VI) (“Multifactor Index-Linked Securities Listing Standards”).

B. Proposed Rule 5711 - Trading of Certain Derivative Securities

NASDAQ has proposed to adopt new Rule 5711 (“Trading of Certain Derivative Securities”), which would set forth listing standards for the following securities: Index-Linked Exchangeable Notes; Equity Gold Shares; Trust Certificates; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Trust Units; Managed Trust Securities; and Currency Warrants.

1. Index-Linked Exchangeable Notes

Proposed Rule 5711(a) would adopt generic listing standards for Index-Linked Exchangeable Notes. Index-Linked Exchangeable Notes are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount (“Cash Value Amount”) based on the reported market prices of the

underlying stocks of an underlying index.³⁴

Index-Linked Exchangeable Notes would be considered for listing and trading by NASDAQ pursuant to Rule 19b-4(e) under the Act,³⁵ provided:

- Both the issue and the issuer of such security meet the requirements of NASDAQ Rule 5730 (“Listing Requirements for Securities Not Specified Above (Other Securities)”), except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations or redeemable at the option of the holders thereof on at least a weekly basis, then no minimum public distribution and no minimum number of holders.³⁶
- The issue has a minimum term of one year.³⁷
- The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirements set forth in NASDAQ Rule 5405(b).³⁸ In the alternative, the issuer will be expected:
 - (i) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 5405(b); and (ii)
 - not to have issued Index-Linked Exchangeable Notes where the original issue price of all the issuer’s other Index-Linked Exchangeable Note offerings (combined with other Index-Linked Exchangeable Note offerings of the issuer’s

³⁴ See proposed Rule 5711(a).

³⁵ 17 CFR 240.19b-4(e).

³⁶ See proposed Rule 5711(a)(i).

³⁷ See proposed Rule 5711(a)(ii).

³⁸ Rule 5405(b) sets forth initial listing standards for primary equity securities.

affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.³⁹

- The index to which an Index-Linked Exchangeable Note is linked shall either be (i) indices that have been created by a third party and been reviewed and have been approved for the trading of options or other derivatives securities (each, a “Third-Party Index”) either by the Commission under Section 19(b)(2) of the Act and rules thereunder or by NASDAQ under rules adopted pursuant to Rule 19b-4(e); or (ii) indices which the issuer has created and for which NASDAQ will have obtained approval from either the Commission pursuant to Section 19(b)(2) and rules thereunder or from NASDAQ under rules adopted pursuant to Rule 19b-4(e) (each, an “Issuer Index”). The Issuer Indices and their underlying securities must meet one of the following: (A) the procedures and criteria set forth in Nasdaq Options Market (“NOM”) Rules, Chapter XIV, Section 6(b) and (c); or (B) the criteria set forth in NASDAQ Rules 5715(b)(3) and (4), the index concentration limits set forth in NOM Rules, Chapter XIV, Section 6, and NOM Rules, Chapter XIV, Section 6(b)(12) insofar as it relates to NOM Rules, Chapter XIV, Section 6(b)(6).⁴⁰

Index-Linked Exchangeable Notes would be treated as equity instruments.⁴¹ The Intraday Indicative Value of each series of Index-Linked Exchangeable Notes would be required to be calculated and widely disseminated by NASDAQ or one or more major market data

³⁹ See proposed Rule 5711(a)(iii).

⁴⁰ See proposed Rule 5711(a)(iv).

⁴¹ See proposed Rule 5711(a)(v).

vendors on at least a 15-second basis during the Regular Market Session.⁴² In addition, the value of the underlying index must also be publicly disseminated to investors, on a real time basis, every 15 seconds.⁴³

Beginning twelve months after the initial issuance of a series of Index-Linked Exchangeable Notes, NASDAQ would consider the suspension of trading in or removal from listing of that series of Index-Linked Exchangeable Notes under any of the following circumstances:

- if the series has fewer than 50,000 notes issued and outstanding;
- if the market value of all Index-Linked Exchangeable Notes of that series issued and outstanding is less than \$1,000,000; or
- if such other event shall occur or such other condition exists which in the opinion of NASDAQ makes further dealings of NASDAQ inadvisable.⁴⁴

The proposed listing requirements relating to Index-Linked Exchangeable Notes are based on, and substantively identical to, NYSE Arca Equities Rule 5.2(j)(4) (“Index-Linked Exchangeable Notes”).

2. Equity Gold Shares

Proposed Rule 5711(b) would establish listing standards for Equity Gold Shares that represent units of fractional undivided beneficial interest in, and ownership of, the Equity Gold Trust. While Equity Gold Shares are not technically “Index Fund Shares,” and thus are not covered by NASDAQ Rule 5705, all other NASDAQ rules that reference “Index Fund Shares”

⁴² See proposed Rule 5711(a)(vi). The term “Intraday Indicative Value” means an estimate of the value of a note or a share of the series of Index-Linked Exchangeable Notes. Id.

⁴³ See proposed Rule 5711(a)(vii). The term “Intraday Indicative Value” means an estimate of the value of a note or a share of the series of Index-Linked Exchangeable Notes. Id.

⁴⁴ See proposed Rule 5711(a)(viii).

shall also apply to Equity Gold Shares.⁴⁵

Except to the extent that specific provisions in proposed Rule 5711(b) govern, or unless the context otherwise requires, the provisions of all other NASDAQ Rules and policies would be applicable to the trading of Equity Gold Shares on NASDAQ.⁴⁶ In addition, the requirements set forth in proposed Rule 5711(d) relating to Commodity-Based Trust Shares would also apply to Equity Gold Shares.⁴⁷

The proposed listing requirements relating to Equity Gold Shares are based on, and substantively identical to, NYSE Arca Equities Rule 5.2(j)(5) (“Equity Gold Shares”).

3. Trust Certificates

Under proposed Rule 5711(c), NASDAQ may consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Certificates. Trust Certificates represent an interest in a special purpose trust created pursuant to a trust agreement. The trust will only issue Trust Certificates. Trust Certificates may or may not provide for the repayment of the original principal investment amount. Trust Certificates pay an amount at maturity which is based upon the performance of specified assets as set forth below:

- an underlying index or indexes of equity securities (“Trust Certificate Equity Reference Asset”);
- instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the foreign or domestic index has declined below (for a put

⁴⁵ See proposed Rule 5711(b)(i).

⁴⁶ See proposed Rule 5711(b)(ii).

⁴⁷ See proposed Rule 5711(b)(iii).

warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index (“Index Warrants”); or

- a combination of two or more Trust Certificate Equity Reference Assets or Index Warrants.⁴⁸

NASDAQ would file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Trust Certificates.⁴⁹

Pursuant to proposed Commentary .01 to Rule 5711(c), NASDAQ would commence delisting or removal proceedings with respect to an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue), under any of the following circumstances:

- if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;
- if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities; provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the NASDAQ Stock Market (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes’ component stocks trade) then the last calculated official index value must remain available

⁴⁸ See proposed Rule 5711(c)(i).

⁴⁹ See proposed Rule 5711(c)(ii).

throughout NASDAQ trading hours; or

- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

Proposed Commentary .02 to Rule 5711(c) provides that the stated term of the trust shall be as stated in the trust prospectus; however, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus.

Proposed Commentary .03 to Rule 5711(c) provides that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. In addition, no change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Commentary .04 to Rule 5711(c) provides that voting rights would be as set forth in the applicable trust prospectus.

Proposed Commentary .05 to Rule 5711(c) provides that NASDAQ would implement written surveillance procedures for Trust Certificates.

Proposed Commentary .06 to Rule 5711(c) provides that the Trust Certificates would be subject to NASDAQ's equity trading rules.

Proposed Commentary .07 to Rule 5711(c) provides that prior to the commencement of trading of a particular Trust Certificates listing pursuant to proposed Rule 5711(c), NASDAQ will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to Members providing guidance regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in Trust Certificates.

Proposed Commentary .08 to Rule 5711(c) provides that Trust Certificates may be exchangeable at the option of the holder into securities that participate in the return of the applicable underlying asset. In the event that the Trust Certificates are exchangeable at the option of the holder and contain an Index Warrant, then a Member must ensure that the Member's account is approved for options trading in accordance with the rules of the NOM in order to exercise such rights.

Proposed Commentary .09 to Rule 5711(c) provides that Trust Certificates may pass-through periodic payments of interest and principle of the underlying securities.

Proposed Commentary .10 to Rule 5711(c) provides that the trust payments may be guaranteed pursuant to a financial guaranty insurance policy which may include swap agreements.

Proposed Commentary .11 to Rule 5711(c) provides that the Trust Certificates may be subject to early termination or call features.

The proposed standards relating to Trust Certificates are based on, and substantively identical to, NYSE Arca Equities Rule 5.2(j)(7) ("Trust Certificates").

4. Commodity-Based Trust Shares

Pursuant to proposed Rule 5711(d), NASDAQ may consider for trading, whether by listing or pursuant to unlisted trading privileges, of Commodity-Based Trust Shares that meet the criteria of the rule.⁵⁰ The term "Commodity-Based Trust Shares" is defined as a security (i) that

⁵⁰ Proposed Rule 5711(d) would be applicable only to Commodity-Based Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of NASDAQ. See proposed Rule 5711(d)(ii).

is issued by a trust that holds a specified commodity deposited with the trust; (ii) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.⁵¹ NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares based on an underlying commodity, and each issue of a Commodity-Based Trust Share would be designated as a separate series and would be identified by a unique symbol.⁵²

Under the proposal, NASDAQ would establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the time of commencement of trading on NASDAQ.⁵³ Following the initial 12-month period following commencement of trading on NASDAQ of Commodity-Based Trust Shares, NASDAQ would consider the suspension of trading in or removal from listing of such series under any of the following circumstances:

- if the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity-Based Trust Shares for 30 or more consecutive trading days;
- if the trust has fewer than 50,000 receipts issued and outstanding;
- if the market value of all receipts issued and outstanding is less than \$1,000,000;
- if the value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, trust,

⁵¹ See proposed Rule 5711(d)(iii)(A). The term “commodity” is defined in Section 1(a)(4) of the Commodity Exchange Act (“CEA”). See proposed Rule 5711(d)(iii)(B).

⁵² See proposed Rule 5711(d)(iv).

⁵³ See proposed Rule 5711(d)(v)(A).

custodian or NASDAQ or NASDAQ stops providing a hyperlink on its website to any such unaffiliated commodity value;

- if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.⁵⁴

Upon termination of a trust, NASDAQ requires that Commodity-Based Trust Shares issued in connection with such entity trust be removed from NASDAQ listing. A trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of the trust falls below a specified amount.⁵⁵

Proposed Rule 5711(d)(v)(C) provides that the stated term of the trust shall be as stated in the trust prospectus; however, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus.

Proposed Rule 5711(d)(v)(D) provides that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. In addition, no change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(d)(v)(E) provides that voting rights shall be as set forth in the applicable trust prospectus.

⁵⁴ See proposed Rule 5711(d)(v)(B).

⁵⁵ Id.

Proposed Rules 5711(d)(vi) and (vii) set forth the limitation of NASDAQ liability and requirements for Market Makers in Commodity-Based Trust Shares (see “General Provisions - Limitation of Nasdaq Liability” and “General Provisions - Market Maker Accounts” below for a description of these requirements).

Proposed Commentary .01 to Rule 5711(d) provides that a Commodity-Based Trust Share is a Trust Issued Receipt that holds a specified commodity deposited with the trust.

Proposed Commentary .02 to Rule 5711(d) requires that Members provide all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-Based Trust Shares.

Proposed Commentary .03 to Rule 5711(d) provides that transactions in Commodity-Based Trust Shares would occur during the trading hours specified in NASDAQ Rule 4120.

Proposed Commentary .04 to Rule 5711(d) provides that NASDAQ would file separate proposals under Section 19(b) of the Act before the listing and/or trading of Commodity-Based Trust Shares.

The proposed requirements relating to Commodity-Based Trust Shares are based on, and substantively identical to, NYSE Arca Equities Rule 8.201 (“Commodity-Based Trust Shares”).

5. Currency Trust Shares

Proposed Rule 5711(e) would permit the listing and trading, or trading pursuant to unlisted trading privileges, on NASDAQ of Currency Trust Shares that meet the criteria of the rule.⁵⁶ The term “Currency Trust Shares” as used in the proposed rule means, unless the context

⁵⁶ Proposed Rule 5711(e) would be applicable only to Currency Trust Shares. Except to the extent inconsistent with the proposed Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Currency Trust Shares are included within the definition of “security” or “securities” as

otherwise requires, a security that: (i) is issued by a trust that holds a specified non-U.S. currency or currencies deposited with the trust; (ii) when aggregated in some specified minimum number may be surrendered to the trust by an Authorized Participant (as defined in the trust's prospectus) to receive the specified non-U.S. currency or currencies; and (iii) pays beneficial owners interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust.⁵⁷ NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency or currencies, and each issue of Currency Trust Shares would be designated as a separate series and shall be identified by a unique symbol.⁵⁸

Under the proposal, NASDAQ would establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on NASDAQ.⁵⁹ Following the initial 12-month period following commencement of trading on NASDAQ of Currency Trust Shares, NASDAQ would consider the suspension of trading in or removal from listing of such series under any of the following circumstances:

- if the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares for 30 or more consecutive trading days;
- if the trust has fewer than 50,000 Currency Trust Shares issued and outstanding;
- if the market value of all Currency Trust Shares issued and outstanding is less than \$1,000,000;

such terms are used in the Bylaws and Rules of NASDAQ. See proposed Rule 5711(e)(ii).

⁵⁷ See proposed Rule 5711(e)(iii).

⁵⁸ See proposed Rule 5711(e)(iv).

⁵⁹ See proposed Rule 5711(e)(v)(A).

- if the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, trust, custodian or NASDAQ or NASDAQ stops providing a hyperlink on its website to any such unaffiliated applicable non-U.S. currency value;
- if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.⁶⁰

Upon termination of a trust, NASDAQ would require that Currency Trust Shares issued in connection with such entity trust be removed from NASDAQ listing. A trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of the trust falls below a specified amount.⁶¹

Proposed Rule 5711(e)(v)(C) provides that the stated term of the trust shall be as stated in the trust prospectus; however, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus.

Proposed Rule 5711(e)(v)(D) provides that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. In addition, no change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

⁶⁰ See proposed Rule 5711(e)(v)(B).

⁶¹ Id.

Proposed Rule 5711(e)(v)(E) provides that voting rights shall be as set forth in the applicable trust prospectus.

Proposed Rules 5711(e)(vi) and (vii) set forth the limitation of NASDAQ liability and requirements for Market Makers in Currency Trust Shares (see “General Provisions - Limitation of Nasdaq Liability” and “General Provisions - Market Maker Accounts” below for a description of these requirements).

NASDAQ may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Currency Trust Shares that do not otherwise meet the standards set forth in Commentary .04 to proposed Rule 5711(e).⁶²

Proposed Commentary .01 to Rule 5711(e) states that a Currency Trust Share is a Trust Issued Receipt that holds a specified non-U.S. currency or currencies deposited with the Trust.

Proposed Commentary .02 to Rule 5711(e) requires that Members provide all purchasers of newly issued Currency Trust Shares a prospectus for the series of Currency Trust Shares.

Proposed Commentary .03 to Rule 5711(e) provides that transactions in Currency Trust Shares would occur during the trading hours specified in NASDAQ Rule 4120.

Proposed Commentary .04 to Rule 5711(e) provides that NASDAQ may approve an issue of Currency Trust Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act if such issue satisfies the criteria set forth in the proposed Rule 5711(e), together with the following criteria:

- a minimum of 100,000 shares of a series of Currency Trust Shares is required to be outstanding at commencement of trading (this is not required for issues trading pursuant to unlisted trading privileges);

⁶² See proposed Rule 5711(e)(viii).

- the value of the applicable non-U.S. currency, currencies or currency index must be disseminated by one or more major market data vendors on at least a 15-second delayed basis;
- the Intraday Indicative Value must be calculated and widely disseminated by NASDAQ or one or more major market data vendors on at least a 15-second basis during the Regular Market Session; and
- NASDAQ will implement written surveillance procedures applicable to Currency Trust Shares.

Proposed Commentary .05 to Rule 5711(e) states that if the value of a Currency Trust Share is based, in whole or in part, on an index that is maintained by a broker-dealer, the broker-dealer must erect a “firewall” around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. Additionally, any advisory committee, supervisory board or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

Proposed Commentary .06 to Rule 5711(e) provides that Currency Trust Shares would be subject to NASDAQ’s equity trading rules.

Proposed Commentary .07 to Rule 5711(e) states that if the Intraday Indicative Value or the value of the non-U.S. currency or currencies or the currency index applicable to a series of Currency Trust Shares is not being disseminated as required, NASDAQ may halt trading during

the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, NASDAQ would halt trading no later than the beginning of the trading day following the interruption. If NASDAQ becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it would halt trading in such series until such time as the net asset value is available to all market participants.

The proposed listing standards relating to Currency Trust Shares are based on, and substantively identical to, NYSE Arca Equities Rule 8.202 (“Currency Trust Shares”).

6. Commodity Index Trust Shares

Pursuant to proposed Rule 5711(f), NASDAQ would consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares that meet the criteria of the rule.⁶³ The term “Commodity Index Trust Shares” as used in the proposed rule (unless the context otherwise requires) means a security that: (i) is issued by a trust that (A) is a commodity pool as defined in the CEA and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission (“CFTC”); and (B) holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions; and (ii) when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to

⁶³ Proposed Rule 5711(f) would be applicable only to Commodity Index Trust Shares. Except to the extent inconsistent with the proposed rule, or unless the context otherwise requires, the provisions of the Trust Issued Receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Commodity Index Trust Shares are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of NASDAQ. See proposed Rule 5711(f)(ii).

receive positions in futures contracts on a specified index and cash or short term securities.⁶⁴

NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares based on one or more securities, and Commodity Index Trust Shares based on particular securities would be designated as a separate series and would be identified by a unique symbol.⁶⁵

NASDAQ would establish a minimum number of Commodity Index Trust Shares required to be outstanding at the time of commencement of trading on NASDAQ.⁶⁶ NASDAQ would consider the suspension of trading in or removal from listing of a series of Commodity Index Trust Shares under any of the following circumstances:

- following the initial twelve-month period beginning upon the commencement of trading of the Commodity Index Trust Shares, there are fewer than 50 record and/or beneficial holders of Commodity Index Trust Shares for 30 or more consecutive trading days;
- if the value of the applicable underlying index is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, the trust or the trustee of the trust;
- if the net asset value for the trust is no longer disseminated to all market participants at the same time;
- if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or

⁶⁴ See proposed Rule 5711(f)(iii). The term “futures contract” is commonly known as a “contract of sale of a commodity for future delivery” as set forth in Section 2(a) of the CEA. Id.

⁶⁵ See proposed Rule 5711(f)(iv).

⁶⁶ See proposed Rule 5711(f)(v)(A).

- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.⁶⁷

Upon termination of a trust, NASDAQ would require that Commodity Index Trust Shares issued in connection with such entity trust be removed from NASDAQ listing. A trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of the trust falls below a specified amount.⁶⁸

Proposed Rule 5711(f)(v)(C) provides that the stated term of the trust shall be as stated in the trust prospectus; however, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus.

Proposed Rule 5711(f)(v)(D) provides that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. In addition, no change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(f)(v)(E) provides that voting rights shall be as set forth in the applicable trust prospectus.

Proposed Rules 5711(f)(vi) and (vii) set forth the limitation of NASDAQ liability and requirements for Market Makers in Commodity Index Trust Shares (see “General Provisions - Limitation of NASDAQ Liability” and “General Provisions - Market Maker Accounts” below for a description of these requirements).

Proposed Commentary .01 to Rule 5711(f) states that a Commodity Index Trust Share is

⁶⁷ See proposed Rule 5711(f)(v)(B).

⁶⁸ Id.

a Trust Issued Receipt that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions, deposited with the Trust.

Proposed Commentary .02 to Rule 5711(f) requires that Members provide all purchasers of newly issued Commodity Index Trust Shares a prospectus for the series of Commodity Index Trust Shares.

Proposed Commentary .03 to Rule 5711(f) states that transactions in Commodity Index Trust Shares would occur during the trading hours specified in NASDAQ Rule 4120.

Proposed Commentary .04 to Rule 5711(f) states that NASDAQ would file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares.

The proposed requirements relating to Commodity Index Trust Shares are based on, and substantively identical to NYSE Arca Equities Rule 8.203 (“Commodity Index Trust Shares”).

7. Commodity Futures Trust Shares

Pursuant to proposed Rule 5711(g), NASDAQ would consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity Futures Trust Shares that meet the criteria of the proposed rule.⁶⁹ The term “Commodity Futures Trust Shares” as used in the proposed rules means, unless the context otherwise requires, a security that: (ii) is issued by a trust that (A) is a commodity pool as defined in the CEA and regulations thereunder, and that is

⁶⁹ Proposed Rule 5711(g) would apply only to Commodity Futures Trust Shares. Except to the extent inconsistent with the proposed Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Commodity Futures Trust Shares are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of NASDAQ. See proposed Rule 5711(g)(ii).

managed by a commodity pool operator registered with the CFTC, and (B) holds positions in futures contracts that track the performance of a specified commodity, or interests in a commodity pool which, in turn, holds such positions; and (ii) is issued and redeemed daily in specified aggregate amounts at net asset value.⁷⁰ NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Commodity Futures Trust Shares based on an underlying commodity futures contract, and each issue of Commodity Futures Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.⁷¹

NASDAQ would establish a minimum number of Commodity Futures Trust Shares required to be outstanding at the time of commencement of trading on NASDAQ.⁷² NASDAQ would consider the suspension of trading in or removal from listing of a series of Commodity Futures Trust Shares under any of the following circumstances:

- if, following the initial twelve-month period beginning upon the commencement of trading of the Commodity Futures Trust Shares: (i) the trust has fewer than 50,000 Commodity Futures Trust Shares issued and outstanding; (ii) the market value of all Commodity Futures Trust Shares issued and outstanding is less than \$1,000,000; or (iii) there are fewer than 50 record and/or beneficial holders of Commodity Futures Trust Shares for 30 consecutive trading days;
- if the value of the underlying futures contracts is no longer calculated or available on at least a 15-second delayed basis during NASDAQ's Regular Market Session from a source unaffiliated with the sponsor, the trust or the trustee of the trust;

⁷⁰ See proposed Rule 5711(g)(iii). The term “futures contract” is a “contract of sale of a commodity for future delivery” set forth in Section 2(a) of the CEA. The term “commodity” is defined in Section 1(a)(4) of the CEA. Id.

⁷¹ See proposed Rule 5711(g)(iv).

⁷² See proposed Rule 5711(g)(v)(A).

- if the net asset value for the trust is no longer disseminated to all market participants at the same time;
- if the Intraday Indicative Value is no longer disseminated on at least a 15-second delayed basis during NASDAQ's Regular Market Session; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.⁷³

Upon termination of a trust, NASDAQ requires that Commodity Futures Trust Shares issued in connection with such trust be removed from NASDAQ listing. A trust would terminate in accordance with the provisions of the trust prospectus.⁷⁴

Proposed Rule 5711(g)(v)(C) provides that the stated term of the trust shall be as stated in the prospectus; however, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus.

Proposed Rule 5711(g)(v)(D) provides that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. In addition, no change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(g)(v)(E) provides that voting rights shall be as set forth in the applicable trust prospectus.

Proposed Rules 5711(g)(vi) and (vii) set forth the limitation of NASDAQ liability and

⁷³ See proposed Rule 5711(g)(v)(B).

⁷⁴ Id.

requirements for Market Makers in Commodity Futures Trust Shares (see “General Provisions - Limitation of NASDAQ Liability” and “General Provisions - Market Maker Accounts” below for a description of these requirements).

Proposed Rule 5711(g)(viii) states that NASDAQ would file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Commodity Futures Trust Shares designated on different underlying futures contracts.

Proposed Commentary .01 to Rule 5711(g) would require Members trading in Commodity Futures Trust Shares to provide all purchasers of newly issued Commodity Futures Trust Shares a prospectus for the series of Commodity Futures Trust Shares.

Proposed Commentary .02 to Rule 5711(g) states that transactions in Commodity Futures Trust Shares would occur during the trading hours specified in NASDAQ Rule 4120.

Proposed Commentary .03 to Rule 5711(g) states that if the Intraday Indicative Value or the value of the underlying futures contract is not being disseminated as required, NASDAQ may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the value of the underlying futures contract occurs. If the interruption to the dissemination of the Intraday Indicative Value or the value of the underlying futures contract persists past the trading day in which it occurred, NASDAQ would halt trading no later than the beginning of the trading day following the interruption.

In addition, if NASDAQ becomes aware that the net asset value with respect to a series of Commodity Futures Trust Shares is not disseminated to all market participants at the same time, it would halt trading in such series until such time as the net asset value is available to all market participants.

Proposed Commentary .04 to Rule 5711(g) states that NASDAQ’s rules governing the

trading of equity securities apply to Commodity Futures Trust Shares.

Proposed Commentary .05 to Rule 5711(g) states that NASDAQ would implement written surveillance procedures for Commodity Futures Trust Shares.

The proposed requirements relating to Commodity Futures Trust Shares are based on, and substantively identical to, NYSE Arca Equities Rule 8.204 (“Commodity Futures Trust Shares”).

8. Partnership Units

Pursuant to proposed Rule 5711(h), NASDAQ would consider for trading, whether by listing or pursuant to unlisted trading privileges, Partnership Units that meet the criteria of the proposed rule. The term “Partnership Units” for purposes of the proposed rule means a security (i) that is issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities and/or securities; and (ii) that is issued and redeemed daily in specified aggregate amounts at net asset value.⁷⁵ NASDAQ may list and trade Partnership Units based on an underlying asset, commodity or security, and each issue of a Partnership Unit would be designated as a separate series and would be identified by a unique symbol.⁷⁶

NASDAQ would establish a minimum number of Partnership Units required to be outstanding at the time of commencement of trading on NASDAQ.⁷⁷ NASDAQ would consider removing from listing Partnership Units under any of the following circumstances:

- if, following the initial twelve month period from the date of commencement of

⁷⁵ See proposed Rule 5711(h)(ii). The term “commodity” is defined in Section 1(a)(4) of the CEA. Id.

⁷⁶ See proposed Rule 5711(h)(iii).

⁷⁷ See proposed Rule 5711(h)(iv)(A).

trading of the Partnership Units: (i) the partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Partnership Units for 30 or more consecutive trading days; (ii) the partnership has fewer than 50,000 Partnership Units issued and outstanding; or (iii) the market value of all Partnership Units issued and outstanding is less than \$1,000,000;

- if the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or NASDAQ stops providing a hyperlink on its website to any such investment, commodity or asset value;
- if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.⁷⁸

Upon termination of a partnership, NASDAQ requires that Partnership Units issued in connection with such partnership be removed from NASDAQ listing. A partnership would terminate in accordance with the provisions of the partnership prospectus.⁷⁹

Proposed Rule 5711(h)(iv)(C) provides that the stated term of the partnership shall be as stated in the prospectus; however, such entity may be terminated under such earlier circumstances as may be specified in the Partnership prospectus.

Proposed Rule 5711(h)(iv)(D) provides that the general partner of a partnership must be

⁷⁸ See proposed Rule 5711(h)(iv)(B).

⁷⁹ Id.

an entity having substantial capital and surplus and the experience and facilities for handling partnership business. In cases where, for any reason, an individual has been appointed as general partner, a qualified entity must also be appointed as general partner. In addition, no change is to be made in the general partner of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(h)(iv)(E) provides that voting rights shall be as set forth in the applicable partnership prospectus.

Proposed Rules 5711(h)(v) and (vi) set forth the limitation of NASDAQ liability and requirements for Market Makers in Partnership Units (see “General Provisions - Limitation of NASDAQ Liability” and “General Provisions - Market Maker Accounts” below for a description of these requirements).

Proposed Rule 5711(h)(vii) states that NASDAQ would file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Partnership Units designated on different underlying investments, commodities and/or assets.

Proposed Commentary .01 to Rule 5711(h) requires that Members provide to all purchasers of newly issued Partnership Units a prospectus for the series of Partnership Units.

The proposed requirements relating to Partnership Units are based on, and substantively identical to, NYSE Arca Equities Rule 8.300 (“Partnership Units”).

9. Trust Units

NASDAQ proposes to add new Rule 5711(i) in order to permit trading, either by listing or pursuant to unlisted trading privileges, of Trust Units.⁸⁰ As defined in the proposed rule, a

⁸⁰ The provisions of proposed Rule 5711(i) are applicable only to Trust Units. Except to the extent inconsistent with the proposed rule or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Trust Units are included within the definition of “security,” “securities” and “derivative securities products” as such terms are used in the Rules of NASDAQ. See proposed Rule 5711(i)(i).

“Trust Unit” is a security that is issued by a trust or other similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities.⁸¹ Under the proposal, NASDAQ may list and trade Trust Units based on an underlying asset, commodity, security or portfolio, and each issue of a Trust Unit shall be designated as a separate series and shall be identified by a unique symbol.⁸²

NASDAQ would establish a minimum number of Trust Units required to be outstanding at the time of commencement of trading on NASDAQ.⁸³ NASDAQ would obtain a representation from the issuer of each series of Trust Units that the net asset value per share for the series would be calculated daily and be made available to all market participants at the same time.⁸⁴

NASDAQ would remove Trust Units from listing under any of the following circumstances:

- if following the initial twelve month period following the commencement of trading of Trust Units: (i) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Units for 30 or more consecutive trading days; (ii) the trust has fewer than 50,000 Trust Units issued and outstanding; or (iii) the market value of all Trust Units issued and outstanding is less than \$1,000,000; or
- if such other event shall occur or condition exists which in the opinion of the

⁸¹ See proposed Rule 5711(i)(ii). The term “commodity” is defined in Section 1(a)(4) of the CEA. Id.

⁸² See proposed Rule 5711(i)(iii).

⁸³ See proposed Rule 5711(i)(iv)(A)(1).

⁸⁴ See proposed Rule 5711(i)(iv)(A)(2).

NASDAQ makes further dealings on NASDAQ inadvisable.⁸⁵

Proposed Rule 5711(i)(iv)(B)(2) provides that NASDAQ would halt trading in a series of Trust Units if the circuit breaker parameters in NASDAQ Rule 4120(a)(11) have been reached. In exercising its discretion to halt or suspend trading in a series of Trust Units, NASDAQ may consider any relevant factors. In particular, if the portfolio and net asset value per share are not being disseminated as required, NASDAQ may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or net asset value per share occurs. If the interruption to the dissemination of the portfolio holdings or net asset value per share persists past the trading day in which it occurred, NASDAQ would halt trading no later than the beginning of the trading day following the interruption.

Upon termination of a trust, NASDAQ would require that Trust Units issued in connection with such trust be removed from NASDAQ listing. A trust would terminate in accordance with the provisions of the prospectus.⁸⁶

Proposed Rule 5711(i)(iv)(C) provides that the stated term of the trust shall be as stated in the prospectus; however, such entity may be terminated under such earlier circumstances as may be specified in the prospectus.

Proposed Rule 5711(i)(iv)(D) provides that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. In addition, no change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

⁸⁵ See proposed Rule 5711(i)(iv)(B)(1).

⁸⁶ See proposed Rule 5711(i)(iv)(B)(2).

Proposed Rule 5711(i)(iv)(E) provides that voting rights shall be as set forth in the prospectus.

Proposed Rules 5711(i)(v) and (vi) set forth the limitation of NASDAQ liability and requirements for Market Makers in Trust Units (see “General Provisions - Limitation of NASDAQ Liability” and “General Provisions - Market Maker Accounts” below for a description of these requirements).

Proposed Commentary .01 to Rule 5711(i) requires that Members provide to all purchasers of newly issued Trust Units a prospectus for the series of Trust Units.

Proposed Commentary .02 to Rule 5711(i) states that transactions in Trust Units would occur during the trading hours specified in NASDAQ Rule 4120.

Proposed Commentary .03 to Rule 5711(i) states that NASDAQ would file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Trust Units designated on different underlying investments, commodities, assets and/or portfolios.

The proposed requirements relating to Trust Units are based on, and substantively identical to, NYSE Arca Equities Rule 8.500 (“Trust Units”).

10. Managed Trust Securities

Pursuant to proposed Rule 5711(j), NASDAQ would consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Trust Securities that meet the criteria of the proposed rule.⁸⁷ As used in the proposed rule and unless the context otherwise requires, the term “Managed Trust Securities” means a security that is registered under the Securities Act of 1933, as amended, and which: (i) is issued by a trust that (A) is a commodity pool as defined

⁸⁷ Proposed Rule 5711(j) would apply only to Managed Trust Securities. Managed Trust Securities are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of NASDAQ. See proposed Rule 5711(j)(ii).

in the CEA and regulations thereunder, and that is managed by a commodity pool operator registered with the CFTC, and (B) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts selected by the trust's advisor consistent with the trust's investment objectives, which would only include, exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, each as disclosed in the trust's prospectus as such may be amended from time to time; and (ii) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value.⁸⁸ NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Managed Trust Securities based on the underlying portfolio of exchange-traded futures and/or certain currency forward contracts described in the related prospectus, and each issue of Managed Trust Securities shall be designated as a separate trust or series and shall

⁸⁸ See proposed Rule 5711(j)(iii)(A). Proposed Rule 5711(j)(iii) includes the following additional definitions concerning Managed Trust Securities:

- The term “Disclosed Portfolio” means the identities and quantities of the securities and other assets held by the trust that will form the basis for the trust's calculation of net asset value at the end of the business day. See proposed Rule 5711(j)(iii)(B).
- The term “Intraday Indicative Value” is the estimated indicative value of a Managed Trust Security based on current information regarding the value of the securities and other assets in the Disclosed Portfolio. See proposed Rule 5711(j)(iii)(C).
- The term “Reporting Authority” in respect of a particular series of Managed Trust Securities means NASDAQ, an institution, or a reporting or information service designated by NASDAQ or by the trust or the exchange that lists a particular series of Managed Trust Securities (if NASDAQ is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value, the Disclosed Portfolio, the amount of any cash distribution to holders of Managed Trust Securities, net asset value, or other information relating to the issuance, redemption or trading of Managed Trust Securities. A series of Managed Trust Securities may have more than one Reporting Authority, each having different functions. See proposed Rule 5711(j)(iii)(D).

be identified by a unique symbol.⁸⁹

Managed Trust Securities would be listed and traded on NASDAQ subject to application of the following initial listing criteria:

- NASDAQ will establish a minimum number of Managed Trust Securities required to be outstanding at the time of commencement of trading on NASDAQ; and
- NASDAQ will obtain a representation from the issuer of each series of Managed Trust Securities that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.⁹⁰

Under proposed Rule 5711(j)(v)(B), each series of Managed Trust Securities would be listed and traded on NASDAQ subject to application of the following continued listing criteria:

- The Intraday Indicative Value for Managed Trust Securities will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Trust Securities trade on NASDAQ.
- The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.
- The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components

⁸⁹ See proposed Rule 5711(j)(iv).

⁹⁰ See proposed Rule 5711(j)(v)(A). The term “Disclosed Portfolio” means the identities and quantities of the securities and other assets held by the trust that will form the basis for the trust’s calculation of net asset value at the end of the business day. See proposed Rule 5711(j)(iii)(B).

of the portfolio.⁹¹

Under proposed Rule 5711(j)(v)(B)(3), NASDAQ would consider the suspension of trading in or removal from listing of a series of Managed Trust Securities under any of the following circumstances:

- if, following the initial twelve-month period beginning upon the commencement of trading of the Managed Trust Securities: (i) the Trust has fewer than 50,000 Managed Trust Securities issued and outstanding; (ii) the market value of all Managed Trust Securities issued and outstanding is less than \$1,000,000; or (iii) there are fewer than 50 record and/or beneficial holders of Managed Trust Securities for 30 consecutive trading days;
- if the Intraday Indicative Value for the trust is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;
- if the Trust issuing the Managed Trust Securities has failed to file any filings required by the Commission or if NASDAQ is aware that the trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Trust with respect to the series of Managed Trust Securities; or

⁹¹ The term “Reporting Authority” in respect of a particular series of Managed Trust Securities means NASDAQ, an institution, or a reporting or information service designated by NASDAQ or by the trust or the exchange that lists a particular series of Managed Trust Securities (if NASDAQ is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value, the Disclosed Portfolio, the amount of any cash distribution to holders of Managed Trust Securities, net asset value, or other information relating to the issuance, redemption or trading of Managed Trust Securities. A series of Managed Trust Securities may have more than one Reporting Authority, each having different functions. See proposed Rule 5711(j)(iii)(D).

- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

Proposed Rule 5711(j)(v)(B)(4) provides that, if the Intraday Indicative Value of a series of Managed Trust Securities is not being disseminated as required, NASDAQ may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, NASDAQ would halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Trust Securities is trading on NASDAQ pursuant to unlisted trading privileges, NASDAQ would halt trading in that series as specified in NASDAQ Rule 4120(a) or (b), as applicable. In addition, if NASDAQ becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Trust Securities is not disseminated to all market participants at the same time, it would halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

Proposed Rule 5711(j)(v)(B)(5) provides that upon termination of a trust, NASDAQ requires that Managed Trust Securities issued in connection with such trust be removed from NASDAQ listing. A trust would terminate in accordance with the provisions of the trust prospectus.

Proposed Rule 5711(j)(v)(C) provides that the term of the trust shall be as stated in the prospectus; however, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus.

Proposed Rule 5711(j)(v)(D) provides that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for

handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. In addition, no change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(j)(v)(E) provides that voting rights shall be as set forth in the applicable trust prospectus.

Proposed Rules 5711(j)(vi) and (vii) set forth the limitation of NASDAQ liability and requirements for Market Makers in Managed Trust Securities (see “General Provisions - Limitation of NASDAQ Liability” and “General Provisions - Market Maker Accounts” below for a description of these requirements).

Proposed Rule 5711(j)(viii) provides that NASDAQ would file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Managed Trust Securities.

Proposed Commentary .01 to Rule 5711(j) requires that Members provide all purchasers of newly issued Managed Trust Securities a prospectus for the series of Managed Trust Securities.

Proposed Commentary .02 to Rule 5711(j) states that transactions in Managed Trust Securities would occur during the trading hours specified in NASDAQ Rule 4120.

Proposed Commentary .03 to Rule 5711(j) states that NASDAQ’s rules governing the trading of equity securities apply to Managed Trust Securities.

Proposed Commentary .04 to Rule 5711(j) states that NASDAQ would implement written surveillance procedures for Managed Trust Securities.

Proposed Commentary .05 to Rule 5711(j) states that if the trust’s advisor is affiliated

with a broker-dealer, the broker-dealer shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio. Personnel who make decisions on the trust’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable trust portfolio.

The proposed requirements relating to Managed Trust Securities are based on, and substantively identical to, NYSE Arca Equities Rule 8.700 (“Managed Trust Securities”).

11. Currency Warrants

Proposed Rule 5711(k) would govern the listing of Currency Warrants, and the proposed rule provides that the listing of Currency Warrant issues is considered on a case-by-case basis. Pursuant to proposed Rule 5711(k)(i), Currency Warrant issues would be evaluated for listing against the following criteria:

- The warrant issuer will be expected to have to a minimum tangible net worth in excess of \$250,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 5405(b).⁹² In the alternative, the warrant issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 5405(b); and (ii) not to have issued warrants where the original issue price of all the issuer’s currency warrant offerings (combined with currency warrant offerings of the issuer’s affiliates) listed on a national securities exchange or traded through the facilities of NASDAQ exceeds 25% of the warrant issuer’s net worth.⁹³

⁹² Rule 5405(b) sets forth initial listing standards for primary equity securities.

⁹³ See proposed Rule 5711(k)(i)(A).

- The term must be one to five years from date of issuance.⁹⁴
- There must be a minimum public distribution of 1,000,000 warrants together with a minimum of 400 public holders, and an aggregate market value of \$4,000,000. In the alternative, there must be a minimum public distribution of 2,000,000 warrants together with a minimum number of public warrant holders determined on a case by case basis, an aggregate market value of \$12,000,000 and an initial warrant price of \$6.⁹⁵
- The warrants must be cash settled in U.S. dollars.⁹⁶
- All currency warrants must include in their terms provisions specifying the time by which all exercise notices must be submitted, and that all unexercised warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by NASDAQ (if such warrant issue has not been listed on another organized securities market in the United States).⁹⁷

NASDAQ would file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Currency Warrants.⁹⁸

Proposed Rule 5711(k)(iii) describes regulatory requirements applicable to Currency Warrants. Specifically:

- No Member shall accept an order from a customer to purchase or sell a Currency

⁹⁴ See proposed Rule 5711(k)(i)(B).

⁹⁵ See proposed Rule 5711(k)(i)(C).

⁹⁶ See proposed Rule 5711(k)(i)(D).

⁹⁷ See proposed Rule 5711(k)(i)(E).

⁹⁸ See proposed Rule 5711(k)(ii).

Warrant unless the customer's account has been approved for options trading pursuant to NOM Rules, Chapter XI, Section 7.⁹⁹

- The provisions of NOM Rules, Chapter XI, Section 9 shall apply to recommendations in Currency Warrants and the term “option” as used therein shall be deemed to include Currency Warrants.¹⁰⁰
- Any account in which a Member exercises discretion to trade in Currency Warrants shall be subject to the provisions of NOM Rules, Chapter XI, Section 10 with respect to such trading, and the terms “option” and “options contract” as used in therein shall be deemed to include Currency Warrants.¹⁰¹
- NOM Rules, Chapter XI, Section 8 shall apply to all customer accounts of a Member in which transactions in Currency Warrants are effected, and the term “option” as used therein shall be deemed to include Currency Warrants.¹⁰²
- NOM Rules, Chapter XI, Section 24 shall apply to all public customer complaints received by a Member regarding Currency Warrants, and the term “option” as used therein shall be deemed to include Currency Warrants.¹⁰³
- Members participating in Currency Warrants shall be bound to comply with the “Communications and Disclosures” rule of the Financial Industry Regulatory Authority (“FINRA”), as applicable, as though such rule were part of NASDAQ’s

⁹⁹ See proposed Rule 5711(k)(iii)(A).

¹⁰⁰ See proposed Rule 5711(k)(iii)(B).

¹⁰¹ See proposed Rule 5711(k)(iii)(C).

¹⁰² See proposed Rule 5711(k)(iii)(D).

¹⁰³ See proposed Rule 5711(k)(iii)(E).

proposed rules relating to Currency Warrants.¹⁰⁴

Under proposed Rule 5711(k)(iv), trading on NASDAQ in any Currency Warrant would be halted whenever NASDAQ deems such action appropriate in the interests of a fair and orderly market or to protect investors. Trading in Currency Warrants that have been the subject of a halt or suspension by NASDAQ may resume if NASDAQ determines that the conditions which led to the halt or suspension are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading.

Proposed Rule 5711(k)(v) would govern reporting of Currency Warrant positions. Proposed Rule 5711(k)(v)(A) would require each Member to file with NASDAQ a report with respect to each account in which the Member has an interest, each account of a partner, officer, director, or employee of such Member, and each customer account that has established an aggregate position (whether long or short) of 100,000 warrants covering the same underlying currency, combining for purposes of the proposed rule: (i) long positions in put warrants and short positions in call warrants; and (i) short positions in put warrants with long positions in call warrants. The report shall be in such form as may be prescribed by NASDAQ and shall be filed no later than the close of business on the next day following the day on which the transaction or transactions requiring the filing of such report occurred.

Proposed Rule 5711(k)(v)(B) provides that whenever a report shall be required to be filed with respect to an account pursuant to the proposed rule, the Member filing the same must file with NASDAQ such additional periodic reports with respect to such account as NASDAQ may from time to time require.

Proposed Rule 5711(k)(v)(C) provides that all reports required by the proposed rule shall

¹⁰⁴ See proposed Rule 5711(k)(iii)(F).

be filed with NASDAQ in such manner and form as prescribed by NASDAQ.

The proposed requirements relating to Currency Warrants are based on, and substantively identical to, the requirements for Currency Warrants set forth in NYSE Arca Equities Rules 8.3 (“Listing of Currency and Index Warrants”), 8.4 (“Account Approval”), 8.5 (“Suitability”), 8.6 (“Discretionary Accounts”), 8.7 (“Supervision of Accounts”), 8.8 (“Customer Complaints”), 8.9 (“Prior Approval of Certain Communications to Customers”), 8.12 (“Trading Halts or Suspensions”), and 8.13 (“Reporting of Warrant Positions”).

C. General Provisions

To the extent not specifically addressed in the respective proposed rules, and unless otherwise noted below, the following general provisions apply to all of the proposed rules and Subject Securities.

1. Information Circular

Prior to the commencement of trading, NASDAQ will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Subject Securities. Specifically, the Information Circular will discuss the following: (i) the procedures for purchases and redemptions of the Subject Securities (and/or that the Subject Securities are not individually redeemable); (ii) NASDAQ Rule 2310, which imposes suitability obligations on NASDAQ Members with respect to recommending transactions in the Subject Securities to customers; (iii) how information regarding the Intraday Indicative Value is disseminated; (iv) the requirement that Members deliver a prospectus to investors purchasing newly issued Subject Securities prior to or concurrently with the confirmation of a transaction; and (v) trading information.

In addition, the Information Circular will advise Members, prior to the commencement of

trading, of the prospectus delivery requirements applicable to the Subject Securities. Members purchasing Subject Securities for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Subject Securities are subject to various fees and expenses described in the registration statement. If applicable, the Information Circular will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Information Circular will also disclose the trading hours of the Subject Securities and, if applicable, the Net Asset Value (“NAV”) calculation time for the Subject Securities. The Information Circular will disclose that information about the Subject Securities and the corresponding indexes, if applicable, will be publicly available on the website for the Subject Securities. The Information Circular will also reference, if applicable, the fact that there is no regulated source of last sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities or futures contracts on which the value of the Subject Securities may be based.

The Information Circular will also reference the risks involved in trading the Subject Securities during the Opening Process and the Post-Market Session when an updated Intraday Indicative Value will not be calculated or publicly disseminated and, if applicable, the risks involved in trading the Subject Securities during the Regular Market Session when the Intraday Indicative Value may be static or based in part on the fluctuation of currency exchange rates when the underlying markets have closed prior to the close of NASDAQ’s Regular Market Session.

2. Limitation of NASDAQ Liability

Neither NASDAQ, any agent of NASDAQ, nor the Reporting Authority (if applicable), shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable underlying index or asset value; the current value of the applicable positions or interests required to be deposited to a Trust, if applicable, in connection with issuance of the securities; net asset value; or any other information relating to the purchase, redemption, or trading of the Subject Securities, resulting from any negligent act or omission by NASDAQ, any agent of NASDAQ, or the Reporting Authority (if applicable), or any act, condition or cause beyond the reasonable control of NASDAQ, any agent of NASDAQ, or the Reporting Authority (if applicable), including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in the applicable positions or interests.

3. Market Maker Accounts

A registered Market Maker in the securities described below must file with NASDAQ, in a manner prescribed by NASDAQ, and keep current a list identifying all accounts for trading in:

- in the case of Commodity-Based Trust Shares, the applicable underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Commodities”);
- in the case of Currency Trust Shares, the applicable underlying non-U.S. currency, options, futures or options on futures on such currency, or any other

derivatives based on such currency, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Currencies”);

- in the case of Commodity Index Trust Shares, the applicable physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index or based on any commodity included in such index, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Commodity Index Assets”);
- in the case of Commodity Futures Trust Shares, the applicable underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Commodity Futures”);
- in the case of Partnership Units, the applicable underlying asset or commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Partnership Unit Assets”);
- in the case of Trust Units, the applicable underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Trust Unit Assets”);
and
- in the case of Managed Trust Securities, the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives,

which a registered Market Maker may have or over which it may exercise investment discretion (“Underlying Managed Trust Assets”).

No registered Market Maker in the above mentioned securities shall trade in the respective Underlying Commodities, Underlying Currencies, Underlying Commodity Index Assets, Underlying Commodity Futures, Underlying Partnership Unit Assets, Underlying Trust Unit Assets, and/or the Underlying Managed Trust Assets (collectively, “Underlying Assets”) in an account in which a Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to NASDAQ.

In addition to the existing obligations under NASDAQ rules regarding the production of books and records (see, e.g., Rule 4625), a registered Market Maker in the above mentioned securities is required to make available to NASDAQ such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable Underlying Assets as may be requested by NASDAQ.

4. Trading Rules

NASDAQ deems the Subject Securities to be equity securities, thus rendering trading in the Subject Securities subject to NASDAQ’s existing rules governing the trading of equity securities. The Subject Securities will trade on NASDAQ from 8:00 a.m. to 8:00 p.m. E.T. NASDAQ has appropriate rules to facilitate transactions in the Subject Securities during all trading sessions. The minimum price increment for quoting and entry of orders in equity securities traded on NASDAQ is \$0.01, with the exception of securities that are priced less than \$1.00 for which the minimum price increment for order entry is \$0.0001.

5. Surveillance

NASDAQ believes that its surveillance procedures are adequate to address any concerns about the trading of the Subject Securities on NASDAQ. Trading of the Subject Securities on NASDAQ will be subject to FINRA's surveillance procedures for derivative products.¹⁰⁵ NASDAQ may obtain information via the ISG from other exchanges who are members or affiliates of the ISG.¹⁰⁶

In addition, to the extent that a Subject Security invests in futures contracts, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. NASDAQ has a general policy prohibiting the distribution of material, non-public information by its employees.

As a general matter, NASDAQ has regulatory jurisdiction over its Members and their associated persons, which includes any person or entity controlling a Member, as well as a subsidiary or affiliate of a Member that is in the securities business. A subsidiary or affiliate of a Member that does business only in commodities or futures contracts would not be subject to NASDAQ jurisdiction, but NASDAQ could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a Member.

6. Trading Halts

With respect to trading halts, in addition to the trading halt requirements set forth in the proposed rules, NASDAQ may consider all relevant factors in exercising its discretion to halt or suspend trading in the Subject Securities. Trading in the Subject Securities may be halted

¹⁰⁵ FINRA surveils trading on NASDAQ pursuant to a regulatory services agreement. NASDAQ is responsible for FINRA's performance under this regulatory services agreement.

¹⁰⁶ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

because of market conditions or for reasons that, in the view of NASDAQ, make trading in the Subject Securities inadvisable. These may include: (i) the extent to which trading in the underlying asset or assets is not occurring; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Subject Securities will be subject to trading halts caused by extraordinary market volatility pursuant to NASDAQ's "circuit breaker" Rule 4120(a)(11) or by the halt or suspension of the trading of the current underlying asset or assets.

If the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets (e.g., securities, commodities, currencies, futures contracts, or other assets) is not being disseminated as required, NASDAQ may halt trading during the day in which such interruption to the dissemination occurs. If the interruption to the dissemination of the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets persists past the trading day in which it occurred, NASDAQ will halt trading no later than the beginning of the trading day following the interruption. In addition, if NASDAQ becomes aware that the net asset value with respect to a series of the Subject Securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

7. Suitability

Currently, NASDAQ Rule 2310 governs Recommendations to Customers (Suitability), Fair Dealing with Customers, Suitability Obligations to Institutional Customers, and Direct Participation Programs.

Prior to the commencement of trading of any inverse, leveraged, or inverse leveraged Subject Securities, NASDAQ will inform its Members of the suitability requirements of

NASDAQ Rule 2310 in an Information Circular. Specifically, Members will be reminded in the Information Circular that, in recommending transactions in these securities, they must have a reasonable basis to believe that: (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such Member; and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the securities. In connection with the suitability obligation, the Information Circular will also provide that Members must make reasonable efforts to obtain the following information: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such Member or registered representative in making recommendations to the customer.

In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities, as described in FINRA Regulatory Notices 09-31 (June 2009), 09-53 (August 2009) and 09-65 (November 2009) ("FINRA Regulatory Notices"). Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices. The Information Circular will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities.

NASDAQ notes that, for such inverse, leveraged, and inverse leveraged securities, the corresponding funds seek leveraged, inverse, or leveraged inverse returns on a daily basis, and do not seek to achieve their stated investment objective over a period of time greater than one

day because compounding prevents the funds from perfectly achieving such results.

Accordingly, results over periods of time greater than one day typically will not be a leveraged multiple (+200%), the inverse (-100%) or a leveraged inverse multiple (-200%) of the period return of the applicable benchmark and may differ significantly from these multiples.

NASDAQ's Information Circular, as well as the applicable registration statement, will provide information regarding the suitability of an investment in such securities.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰⁷ In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,¹⁰⁸ which requires, among other things, that rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it has previously approved substantively identical listing standards for the listing and trading of the Subject Securities on NYSE Arca.¹⁰⁹

¹⁰⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰⁸ 15 U.S.C. 78f(b)(5).

¹⁰⁹ See NYSE Arca Equities Rules 5.2(j)(4); 5.2(j)(5); 5.2(j)(6)(B)(I)(2), 5.2(j)(6)(B)(II)(2), 5.2(j)(6)(B)(IV); 5.2(j)(6)(B)(V); 5.2(j)(6)(B)(VI); Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6); NYSE Arca Equities Rules 5.2(j)(7); 8.201; 8.202; 8.203; 8.204; NYSE Arca Rules 8.3 - 8.9, 8.12, 8.13; and NYSE Arca Equities Rules 8.300; 8.500; and

A. Generic Listing Standards

Rule 19b-4(e) under the Act¹¹⁰ provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to Section (c)(1) of Rule 19b-4,¹¹¹ if the Commission has approved, pursuant to Section 19(b) of the Act,¹¹² the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. The Exchange is proposing to: (i) amend the continued generic listing standards for Equity Index-Linked Securities and Commodity-Linked Securities under amended Rule 5710; (ii) adopt initial and continued generic listing standards for Fixed Income-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities under amended Rule 5710; (iii) adopt generic listing standards for Index-Linked Exchangeable Notes under proposed Rule 5711(a); and (iv) adopt generic listing standards for Currency Trust Shares under proposed Rule 5711(e), pursuant to which the Exchange will be able to list and trade such securities without Commission approval of each individual product under Rule 19b-4(e).¹¹³ Accordingly, any securities that the Exchange lists and/or trades pursuant to NASDAQ Rules 5710, 5711(a) and 5711(e), as proposed, must satisfy the standards set forth therein.¹¹⁴

8.700. The Exchange has represented that there are no material substantive differences between the proposed rules and the NYSE Arca Equities Rules on which they are based.

¹¹⁰ 17 CFR 240.19b-4(e)

¹¹¹ 17 CFR 240.19b-4(c)(1).

¹¹² 15 U.S.C. 78s(b).

¹¹³ 17 CFR 240.19b-4(e).

¹¹⁴ Under the proposal, the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e) for Linked Securities or Currency Trust Shares would not preclude the Exchange from submitting a separate filing pursuant

1. Equity Index-Linked Securities and Commodity Linked Securities

The Commission has previously approved, pursuant to Section 19(b) of the Act and in accordance with Rule 19b-4(e) thereunder, the adoption of generic initial and continued listing standards for the listing and trading of Equity Index-Linked Securities and Commodity-Linked Securities on the Exchange, so that securities that satisfy such proposed generic listing standards for Equity Index-Linked Securities and Commodity-Linked Securities may commence trading on the Exchange without public comment and Commission approval.¹¹⁵ The Commission notes that it has previously approved the same generic listing standards for Equity Index-Linked Securities and Commodity-Linked Securities for NYSE Arca.¹¹⁶ The Commission believes that, because the proposed continued listing requirements under proposed Rules 5710(k)(i)(B) and (k)(ii)(B) for Equity Index-Linked Securities and Commodity-Linked Securities, respectively,¹¹⁷ are substantively identical to those of NYSE Arca and present no unique or novel regulatory issues, such proposed requirements are reasonably designed to protect investors and the public interest. Specifically, and as further discussed above, under the proposed continued listing standards, NASDAQ would commence delisting or removal proceedings of a series of Equity Index-Linked

to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular series of Linked Securities or Currency Trust Shares. See introductory paragraphs to Rule 5710 and proposed Rule 5711(e) (providing that NASDAQ may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities or Currency Trust Shares, respectively, that do not otherwise meet the generic listing standards set forth in the relevant rules applicable to them).

¹¹⁵ See Securities Exchange Act Release Nos. 54167 (July 18, 2009), 71 FR 42145 (July 25, 2006) (SR-NASDAQ-2006-002) (approving generic listing standards for Equity Index-Linked Securities on NASDAQ) and 56910 (December 5, 2007), 72 FR 70628 (December 12, 2007) (SR-NASDAQ-2007-071) (approving generic listing standards for Commodity-Linked Securities).

¹¹⁶ See Securities Exchange Act Release No. 52204 (August 3, 2005), 72 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (approving generic listing standards for Index-Linked Securities). See also NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(2) and (B)(II)(2).

¹¹⁷ See supra note 4.

Securities or Commodity-Linked Securities if: (i) the initial listing criteria are not continuously maintained (subject to certain exceptions in the case of Equity Index-Linked Securities as described above); (ii) the aggregate market value or principal amount publicly held is less than \$400,000; (iii) the value of the index or Reference Asset is no longer available or being disseminated; or (iv) if circumstances exist which make further dealings in the securities on NASDAQ inadvisable. The Commission believes that the proposed continued listing standards are adequately designed to ensure transparency of key values and information regarding the securities and will help ensure a minimum level of liquidity for such securities to allow for the maintenance of fair and orderly markets.

2. Fixed Income Index-Linked Securities, Futures Linked Securities, and Multifactor Index-Linked Securities

In addition, the Commission has previously approved the adoption of generic initial and continued listing standards for Fixed-Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, each of which are specific types of “Index-Linked Securities,” on NYSE Arca.¹¹⁸ Consistent with its previous orders, the Commission believes that the generic listing standards proposed by the Exchange for Fixed-Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities should fulfill the intended objective of Rule 19b-4(e) by allowing those Additional Linked Securities that satisfy the generic listing standards to commence trading without public comment and Commission approval.¹¹⁹ The Exchange’s ability to rely on Rule 19b-4(e) to list and trade Additional Linked

¹¹⁸ See Securities Exchange Act Release No. 52204 (August 3, 2005), 72 FR 46559 (August 10, 2005) (SR-PCX-2005-63) (approving generic listing standards for Index-Linked Securities).

¹¹⁹ The Commission notes that the failure of a particular Additional Linked Security issue to satisfy the proposed generic initial listing standards pursuant to Rule 19b-4(e), however,

Securities that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly. In addition, the Commission believes the Exchange's proposal to list and trade the Additional Linked Securities will provide an additional avenue for investors to achieve desired investment objectives through the purchase of Index-Linked Securities, and will benefit investors by increasing competition among markets that trade Index-Linked Securities.

a. Listing and Trading Rules

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Fixed Income-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities pursuant to Rule 19b-4(e) on the Exchange. Such Additional Linked Securities listed under the proposed standards will be subject to the full panoply of NASDAQ rules and procedures that govern the trading of Linked Securities, and also the rules and procedures that govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to members, customer suitability requirements, and Market Maker obligations. In addition, the Additional Linked Securities will be subject to the asset/equity requirements and tangible net worth requirements applicable to Linked Securities, as well as the minimum holder and distribution requirements, principal/market value requirements, and term thresholds for Linked Securities.¹²⁰ In addition, as set forth more fully above, the proposed listing criteria for Fixed Income-Linked Securities include additional requirements relating to relative weighting,

would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular Linked Security. See supra note 114.

¹²⁰ See Rules 5710 (a) – (e), supra note 11.

outstanding principal, market capitalization and diversification. These requirements are designed to ensure that the trading markets for index components underlying the Linked Securities are adequately capitalized and sufficiently liquid, and that no one component dominates the index. Further, the proposed listing criteria for Futures Linked Securities require, subject to certain limited exceptions, that the pricing information for components be derived from an ISG member market or its affiliate, or a market with which NASDAQ has a comprehensive surveillance sharing agreement. The Commission believes that these requirements should significantly minimize the potential for manipulation.

The Exchange's proposed requirements for Multifactor Index-Linked Securities are linked to criteria for other types of Linked Securities set forth in Rule 5710, including the proposed standards applicable to Fixed Income-Linked Securities and Futures-Linked Securities. Accordingly, any underlying Reference Asset for a Multifactor-Index Linked Security would have to satisfy the criteria set out in the Exchange's rules for Reference Assets underlying other Linked Securities.

The generic listing standards permit listing of Additional Linked Securities if the Commission previously approved the underlying index for trading in connection with another derivative product. The Commission believes that if it has previously determined that such index and its components were sufficiently transparent, then the Exchange may rely on this finding, provided that the conditions set forth in the Commission's approval order continue to be satisfied.

The Commission believes that the proposed continued listing requirements for the Additional Linked Securities are reasonably designed to protect investors and the public interest. Under the proposed continued listing standards, NASDAQ would commence delisting or

removal proceedings of a series of Fixed Income Index-Linked Securities, Futures-Linked Securities, or Multifactor Index-Linked Securities if: (i) the initial listing criteria are not continuously maintained; (ii) the aggregate market value or principal amount publicly held is less than \$400,000; (iii) the value of the Reference Asset is no longer available or being disseminated; or (iv) if circumstances exist which make further dealings in the securities on NASDAQ inadvisable. The Commission believes that the proposed continued listing standards are adequate to ensure transparency of key values and information regarding the Additional Linked Securities. The Commission further believes that the continued listing standards will help ensure a minimum level of liquidity exists for such securities to allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series of such securities if circumstances warrant such action.

b. Dissemination of Information

The Additional Linked Securities will be subject to the Reference Asset information dissemination requirements applicable to all Linked Securities.¹²¹ The proposed listing requirements for Additional Linked Securities also require that: (i) in the case of Fixed Income-Linked Securities, the Reference Asset must be widely disseminated to the public at least once per business day; and (ii) in the case of Futures-Linked Securities and Multifactor Index-Linked Securities, the Reference Asset must be, and, if the security is periodically redeemable, the Intraday Indicative Value of the security also must be, widely disseminated at least every 15 seconds during the Regular Market Session. In addition, the Additional Linked Securities will be subject to the trading halts requirements applicable to all Linked Securities, which provide that

¹²¹ See proposed Rule 5710(g)(ii) (formerly Rule 5710(i)(ii)), which provides that, subject to certain exceptions, the current value of the index or Reference Asset of a Linked Securities must be widely disseminated at least every 15 seconds during NASDAQ's regular market session.

NASDAQ may halt trading during the day on which an interruption to the dissemination of the Intraday Indicative Value (if required to be disseminated) or the index or Reference Asset value occurs, and that NASDAQ will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.¹²² The Commission believes that the proposed rules are reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Additional Linked Securities appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

The Additional Linked Securities will be subject to the surveillance procedure requirements applicable to Linked Securities.¹²³ In addition, the Exchange has represented that trading of the Additional Linked Securities on NASDAQ will be subject to FINRA's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Linked Securities on NASDAQ.¹²⁴ Further, the proposed listing criteria for Futures Linked Securities require, subject to certain limited exceptions, that the pricing information for components be derived from an ISG member market or its affiliate, or a market with which NASDAQ has a comprehensive surveillance sharing agreement.

d. Additional Provisions

¹²² See proposed Rule 5710(h) (formerly Rule 5710(j)).

¹²³ See proposed Rule 5710(i) (formerly Rule 5710(k)), which provides that FINRA will implement on behalf of NASDAQ written surveillance procedures for Linked Securities, and that NASDAQ will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

¹²⁴ See Notice at 6848.

The Additional Linked Securities will be subject to the requirement that issuers comply with Rule 10A-3 under the Act.¹²⁵ In addition, the Additional Linked Securities will be subject to the index calculation and “firewall” requirements applicable to all Linked Securities.¹²⁶ The Commission believes that the “firewall” restrictions applicable to Linked Securities are designed to prevent the use and dissemination of material, non-public information regarding an underlying index and prevent conflicts of interest with respect to personnel of a broker-dealer maintaining an index underlying such securities. NASDAQ has also represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.¹²⁷ The Commission believes that these requirements, taken together, should significantly minimize the potential for manipulation and will allow for maintenance of a fair and orderly market in the Additional Linked Securities.

Proposed Commentary .01(a) to Rule 5710 would impose additional reporting requirements, trading restrictions and books and records obligations on Members acting as registered Market Makers in Linked Securities. The Commission believes that such restrictions, reporting and record-keeping requirements are reasonably designed to promote a fair and orderly market for Linked Securities and will assist the Exchange in identifying situations potentially susceptible to manipulation.

In addition, the Exchange has represented that prior to the commencement of trading in a series of Additional Linked Securities, the Exchange will inform its Members in an Information

¹²⁵ 17 CFR 240.10A-3. See Rule 5710(f).

¹²⁶ See proposed Rule 5710(g)(i) (formerly Rule 5710(i)(i)), which requires that if an index is maintained by a broker-dealer, the broker-dealer must erect a “firewall” around the personnel who have access to information concerning changes and adjustments to the index and that the index must be calculated by a third party who is not a broker-dealer.

¹²⁷ See Notice at 6848.

Circular of the special characteristics and risks associated with trading the Additional Linked Securities.¹²⁸ The Commission believes that the Exchange's proposal should ensure that its Members have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the Additional Linked Securities.

As discussed above, the Exchange proposes to make certain technical revisions so that the Additional Linked Securities are included in the provisions of Rule 5710 that apply to all Linked Securities. The Commission finds that the technical revisions to NASDAQ Rule 5710 are reasonable and promote transparency and consistent application of certain rules imposed with respect to types of Linked Securities.

The Commission notes that the proposed generic listing standards for Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities are substantively identical to those previously approved by the Commission for the listing and trading of Fixed Income Index-Linked Securities, Futures Linked Securities and Multifactor Index-Linked Securities on NYSE Arca.¹²⁹ As such, the Commission believes that the proposed generic listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

3. Index-Linked Exchangeable Notes

As discussed above, the Commission has previously approved the adoption of generic listing standards for various classes of new derivative securities products to be listed and traded pursuant to Rule 19b-4(e).¹³⁰ In addition, the Commission has previously approved the adoption of generic initial and continued listing standards for Index-Linked Exchangeable Notes on NYSE

¹²⁸ See Notice at 6847.

¹²⁹ See NYSE Arca Equities Rule 5.2(j)(6)(B)(IV), (V), and (VI).

¹³⁰ See supra note 115.

Arca.¹³¹ Consistent with its previous orders, the Commission believes that the generic listing standards proposed by the Exchange for Index-Linked Exchangeable Notes should fulfill the intended objective of Rule 19b-4(e) by allowing those Index-Linked Exchangeable Notes that satisfy the generic listing standards to commence trading without public comment and Commission approval. The Exchange's ability to rely on Rule 19b-4(e) to list and trade Index-Linked Exchangeable Notes that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly. In addition, the Commission believes the Exchange's proposal to list and trade Index-Linked Exchangeable Notes will provide an additional avenue for investors to achieve desired investment objectives through the purchase of index-linked exchangeable debt securities, and will benefit investors by increasing competition among markets that trade index-linked exchangeable debt.

a. Listing and Trading Rules

The Commission finds that NASDAQ's proposal contains adequate rules and procedures to govern the listing and trading of Index-Linked Exchangeable Notes pursuant to Rule 19b-4(e). Index-Linked Exchangeable Notes listed under the standards will be subject to the full panoply of NASDAQ rules and procedures that currently govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to Members, customer suitability requirements, and Market Maker obligations.

¹³¹ See Securities Exchange Act Release No. 49532 (April 7, 2004), 69 FR 19593 (April 13, 2004) (SR-PCX-2004-01) (approving generic listing standards for Index-Linked Exchangeable Notes).

The Commission is satisfied with the Exchange's development of specific listing and delisting criteria for Index-Linked Exchangeable Notes. As described more fully above, the proposed listing criteria include minimum tangible net worth and earnings requirements for issuers. These criteria are, in part, intended to ensure that the issuer has enough assets to meet its obligations under the terms of the note and should help to reduce systematic risk. The proposed listing criteria also include minimum holder and distribution requirements, which should serve to establish a minimum level of liquidity for each series of Index-Linked Exchangeable Notes to allow for maintenance of fair and orderly markets.

The proposed initial listing criteria also contain minimum requirements for the indices the Index-Linked Exchangeable Notes can be linked to, and the underlying components of those indices. The Exchange's proposed requirements for indices underlying Index-Linked Exchangeable Notes are linked to other approved criteria for index-related products. Accordingly, any underlying index would have to follow the criteria adopted by the Exchange and already in the Exchange's rules for that index, including the criteria for component stocks. These requirements will generally contain, among other things, minimum market capitalization, trading volume, and concentration requirements that are designed to reduce manipulation concerns and ensure a minimum level of liquidity for component securities. Accordingly, the Commission believes that these criteria should serve to ensure that the underlying stocks of underlying indices of Index-Linked Exchangeable Notes are well capitalized and actively traded, and should thus significantly minimize the potential for manipulation.

The Commission believes that the proposed continued listing requirements for Index-Linked Exchangeable Notes are reasonably designed to protect investors and the public interest. As further discussed above, under the proposed continued listing standards, beginning 12 months

after the initial issuance of a series of Index-Linked Exchangeable Notes, NASDAQ would consider suspension of trading in or removal of listing of such series if: (i) the series has fewer than 50,000 notes issued and outstanding; (ii) the outstanding market value of the series held is less than \$1,000,000; or (iii) if circumstances exist which make further dealings in the securities on NASDAQ inadvisable. The Commission believes that the continued listing standards will help ensure a minimum level of liquidity exists for such securities to allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

The proposed rule requires that an estimate of the value of a note for each series of Index-Linked Exchangeable Notes will be calculated and widely disseminated at least every 15 seconds, and that the value of any underlying index will also be publicly disseminated to investors, on a real time basis, every 15 seconds.¹³² In addition, the Exchange has represented that it may halt trading during the day on which an interruption to the dissemination of either of these values occurs, and that NASDAQ will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.¹³³ The Commission believes that the proposed rules are reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Index-Linked Exchangeable Notes appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

The Exchange has represented that trading of the Index-Linked Exchangeable Notes on

¹³² See supra note 4.

¹³³ See Notice at 6848.

NASDAQ will be subject to FINRA's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Index-Linked Exchangeable Notes on NASDAQ.¹³⁴

d. Additional Provisions

The Commission notes that the proposed listing criteria requires that if the underlying index is maintained by a broker-dealer, the index must be calculated by a third party who is not a broker-dealer, and the broker-dealer is required to erect firewalls around its personnel who have access to information concerning changes in and adjustments to the index.¹³⁵ NASDAQ has also represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.¹³⁶ The Commission believes that such firewalls and information barrier policies and procedures are adequate to prevent the misuse of material, non-public information regarding changes to the underlying index, and to address the unauthorized transfer and misuse of material, non-public information.

In addition, the Exchange has represented that prior to the commencement of trading in a series of Index-Linked Exchangeable Notes, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Index-Linked Exchangeable Notes.¹³⁷ The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the Index-Linked Exchangeable Notes.

The Commission notes that the proposed generic listing standards for Index-Linked

¹³⁴ See Notice at 6848.

¹³⁵ See proposed Rule 5711(a)(iv)(which requires that an Issuer Index comply with the requirements of NOM Rules, Chapter XIV, Section 6(b)(12).

¹³⁶ See Notice at 6848.

¹³⁷ See Notice at 6847.

Exchangeable Notes are substantively identical to those previously approved by the Commission for the listing and trading of Index-Linked Exchangeable Notes on NYSE Arca.¹³⁸ As such, the Commission believes that the proposed generic listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

4. Currency Trust Shares

As discussed above, the Commission has previously approved the adoption of generic listing standards for various classes of new derivative securities products to be listed and traded pursuant to Rule 19b-4(e).¹³⁹ In addition, the Commission has previously approved generic listing standards for the listing and trading of Currency Trust Shares pursuant to Rule 19b-4(e) on NYSE Arca.¹⁴⁰ The Commission believes that proposed generic listing standards for Currency Trust Shares should fulfill the intended objective of Rule 19b-4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without public comment and Commission approval.¹⁴¹ The Exchange's ability to rely on Rule 19b-4(e) to list and trade Currency Trust Shares that meet the applicable requirements and minimum standards should reduce the time frame for bringing these securities to market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such

¹³⁸ See NYSE Arca Equities Rule 5.2(j)(4).

¹³⁹ See supra note 115.

¹⁴⁰ See Securities Exchange Act Release No. 60065 (June 8, 2009), 74 FR 28310 (June 15, 2009) (SR-NYSEArca-2009-47) (approving generic listing standards for Currency Trust Shares under NYSE Arca Equities Rule 8.202).

¹⁴¹ The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular series of Currency Trust Shares. See supra note 114.

securities available to investors more quickly. In addition, the Commission believes the Exchange's proposal to list and trade Currency Trust Shares will provide an additional avenue for investors to achieve desired investment objectives through the purchase of currency trust shares, and will benefit investors by increasing competition among markets that trade currency trust shares.

a. Listing and Trading Rules

The Commission finds that the proposal contains adequate rules and procedures to govern the listing and trading of Currency Trust Shares pursuant to Rule 19b-4(e) on the Exchange. The Currency Trust Shares listed and traded under the proposed listing standards will be subject to the full panoply of NASDAQ rules and procedures that govern the trading equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to Members, customer suitability requirements, and Market Maker obligations.

For the Exchange to approve an issue of Currency Trust Shares for listing under the generic listing standards, a minimum of 100,000 Currency Trust Shares must be outstanding at the commencement of trading. This requirement should serve to ensure a minimum level of liquidity for each series of Currency Trust Shares, to allow for the maintenance of fair and orderly markets and reduce the potential for manipulation.

As further discussed above, beginning 12 months after the initial issuance of a series of Currency Trust Shares, the Exchange may consider suspending trading in, or removing from listing, such series if: (i) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares for 30 or more consecutive trading days; (ii) the trust has fewer than 50,000 Currency Trust Shares issued and

outstanding; (iii) the market value of the all Currency Trust Shares issued and outstanding is less than \$1,000,000; (iv) the Intraday Indicative Value of the Currency Trust Shares or the value of the underlying currency is no longer calculated or being disseminated on at least a 15-second delayed basis; or (iv) if circumstances exist which make further dealings in the securities on NASDAQ inadvisable. The Commission believes that the proposed continued listing standards are adequate to ensure transparency of key values and information regarding the Currency Trust Shares, and will help ensure a minimum level of liquidity exists for such securities to allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

For Currency Trust Shares to be approved for listing on the Exchange, or for trading pursuant to unlisted trading privileges, under the generic listing standards, each issue must satisfy the following requirements: (i) the value of the underlying non-U.S. currency, currencies, or currency index, as the case may be, must be disseminated by one or more major market data vendors on at least a 15-second delayed basis; and (ii) the Intraday Indicative Value must be calculated and widely disseminated by NASDAQ or one or more major market data vendors on at least a 15-second basis during the Regular Market Session. In addition, if either the Intraday Indicative Value or the value of the underlying non-U.S. currency, currencies, or currency index, as the case may be, is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs, and if such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Further, if the Exchange becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market

participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants. The proposed generic listing standards seek to ensure a minimum level of transparency with respect key values of the underlying currency assets, and establish events that would trigger a trading halt in Currency Trust Shares when the availability of such key information related to Currency Trust Shares becomes impaired. The Commission believes that the proposed rules are reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Currency Trust Shares appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

For an issue of Currency Trust Shares to be approved for listing or trading pursuant to unlisted trading provision under the generic listing standards, NASDAQ must implement written surveillance procedures applicable to Currency Trust Shares. The Exchange has represented that trading of Currency Trust Shares on NASDAQ will be subject to FINRA's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Currency Trust Shares on NASDAQ.¹⁴²

d. Other Provisions

NASDAQ has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, Currency Trust Shares approved for listing and trading, or trading pursuant to unlisted trading privileges, pursuant to the generic listing standards will be subject to certain firewall requirements. These requirements provide

¹⁴² See Notice at 6848.

that, if the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a “firewall” around the personnel responsible for the maintenance of the underlying index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. Furthermore, any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio. The Commission believes that the proposed “firewall” restrictions applicable to Currency Trust Shares are designed to prevent the use and dissemination of material, non-public information regarding an underlying index and prevent conflicts of interest with respect to personnel of a broker-dealer maintaining an index underlying such securities. NASDAQ has also represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.¹⁴³

The proposed rules contain additional reporting requirements, trading restrictions and books and records obligations on Members acting as registered Market Makers in Currency Trust Shares. The Commission believes that such restrictions, reporting and record-keeping requirements are reasonably designed to promote a fair and orderly market for Currency Trust Shares and will assist the Exchange in identifying situations potentially susceptible to manipulation.

The proposed rules prescribe prospectus delivery requirements for purchasers of each newly issued series of Currency Trust Shares. Further, the Exchange has represented that prior

¹⁴³ See Notice at 6848.

to the commencement of trading in a series of Currency Trust Shares, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Additional Linked Securities.¹⁴⁴ The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the Currency Trust Shares.

The Commission notes that the proposed generic listing standards for Currency Trust Shares are substantively identical to those previously approved by the Commission for the listing and trading of Currency Trust Shares on NYSE Arca.¹⁴⁵ As such, the Commission believes that the proposed generic listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

B. Non-generic Listing Standards

The Exchange is proposing to adopt non-generic listing standards for Trust Certificates, Equity Gold Shares, Commodity-Based Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Securities, and Currency Warrants. NASDAQ would be required to file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of such securities NASDAQ seeks to list and/or trade on the Exchange.

1. Trust Certificates

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of Trust Certificates are consistent with the Act. The Commission believes the Exchange's proposal to list and trade Trust Certificates will benefit investors by increasing competition among markets that trade Trust Certificates. The Commission notes that it has

¹⁴⁴ See Notice at 6847.

¹⁴⁵ See NYSE Arca Equities Rule 8.202.

previously approved the adoption of listing standards for Trust Certificates on NYSE Arca.¹⁴⁶

a. Listing and Trading Rules

The Commission finds that NASDAQ's proposal contains adequate rules and procedures to govern the listing and trading of Trust Certificates. Prior to listing and/or trading on the Exchange, NASDAQ must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Trust Certificates. All such Trust Certificates listed and/or traded under proposed Rule 5711(c) will be subject to the full panoply of NASDAQ rules and procedures that currently govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to Members, customer suitability requirements, and Market Maker obligations.

The Commission believes that the proposed criteria under proposed Rule 5711(c) and in particular, the continued listing requirements under proposed Commentary .01 thereto, are reasonably designed to protect investors and the public interest. Specifically, the Exchange must commence delisting or removal proceedings with respect to an issue of Trust Certificates if: (i) the aggregate market value or the principal amount publicly held is less than \$400,000; (ii) the value of the index or composite value of the indexes is no longer calculated or widely disseminated as required; or (iii) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings in Trust Certificates on the Exchange inadvisable. The Commission believes that the proposed continued listing standards are adequate to ensure transparency of key values and information regarding the Trust Certificates, and will help ensure a minimum level of liquidity exists for such securities to allow for the

¹⁴⁶ See Securities Exchange Act Release No. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR-NYSEArca-2008-123) (approving listing standards for Trust Certificates).

maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

The Exchange has represented that it may halt trading during the day on which an interruption to the dissemination of the Intraday Indicative Value or the value of the underlying index or assets occurs, and that NASDAQ will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.¹⁴⁷ In addition, the Exchange has represented that if it becomes aware that the net asset value applicable to a series of Trust Certificates is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.¹⁴⁸ The Commission believes that the proposal is reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Trust Certificates appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

Pursuant to the proposed rules, NASDAQ will implement written surveillance procedures applicable to Trust Certificates. The Exchange has represented that trading of Trust Certificates on NASDAQ will be subject to FINRA's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Trust Certificates on NASDAQ.¹⁴⁹

d. Other Provisions

¹⁴⁷ See Notice at 6848.

¹⁴⁸ See Notice at 6848 - 6849.

¹⁴⁹ See Notice at 6848.

NASDAQ has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.¹⁵⁰ In addition, the Exchange has represented that prior to the commencement of trading in a series of Trust Certificates, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Trust Certificates.¹⁵¹

The Commission notes that NASDAQ's proposed listing standards for Trust Certificates are substantively identical to the listing standards for Trust Certificates on NYSE Arca.¹⁵² As such, the Commission believes that the proposed listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

2. Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units are consistent with the Act. The Commission believes the Exchange's proposal to list and trade Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units will benefit investors by increasing competition among markets that trade such products. The Commission notes that it has previously approved the adoption of listing standards for Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust

¹⁵⁰ See Notice at 6848.

¹⁵¹ See Notice at 6847.

¹⁵² See NYSE Arca Equities Rule 5.2(j)(7).

Units on NYSE Arca.¹⁵³

a. Listing and Trading Rules

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Commodity-Based Trust Shares, Equity Gold Shares,¹⁵⁴ Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units on the Exchange. Prior to listing and/or trading on the Exchange, NASDAQ must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units and Managed Trust Shares. All such securities listed and/or traded will be subject to the full panoply of NASDAQ's rules and procedures that currently govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to Members, customer suitability requirements, and Market Maker obligations. For the initial listing of each series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, the Exchange

¹⁵³ See Securities Exchange Act Release Nos. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132) (approving listing standards for Commodity-Based Trust Shares); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117) (approving the trading of Equity Gold Shares); 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR-PCX-2005-123) (approving listing standards for Currency Trust Shares); 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12) (approving listing standards for Commodity-Indexed Trust Shares); 57838 (May 20, 2008), 73 FR 30649 (May 28, 2008) (SR-NYSEArca-2008-09); 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR-NYSEArca-2006-11) (approving listing standards for Partnership Shares); and 57059 (December 28, 2007), 73 FR 909 (January 4, 2008) (SR-NYSEArca-2006-76) (approving listing standards for Trust Units).

¹⁵⁴ The proposed listing rules for Equity Gold Shares provide that the provisions set forth in proposed Rule 5711(d) (Commodity-Based Trust Shares) will apply to Equity Gold Shares. Thus, all of the listing requirements applicable to Commodity-Based Trust Shares will also apply to Equity Gold Shares.

must establish a minimum number of such securities required to be outstanding at the commencement of trading on the Exchange. In addition, for the initial listing of Trust Units, NASDAQ must obtain a representation from the issuer of a series of Trust Units that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

As further discussed above, the Exchange may consider suspending trading in, or removing from listing, a series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, or Trust Units if there are fewer than 50 record and/or or beneficial holders of such series for 30 or more consecutive trading days. In addition, with respect to Commodity-Based Trust Shares, Equity Gold Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, the Exchange may consider suspending trading in, or removing from listing, a series if there are fewer than 50,000 such securities issued and outstanding or if the market value of all such securities issued and outstanding is less than \$1,000,000. The Exchange may also consider suspending trading in, or removing from listing, a series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, or Partnership Units if the value of the underlying benchmark is no longer calculated or available on at least a 15-second delayed basis from an unaffiliated source, or the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis. In the case of Commodity Index Trust Shares and Commodity Futures Trust Shares, the Exchange may further consider suspending trading in, or removing from listing, a series if the net asset value for such series is no longer disseminated to all market participants at the same time. Finally, the Exchange may consider suspending

trading in, or removing from listing, such securities if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

The Commission believes that the proposed initial and continued listing standards are adequate to ensure transparency of key values and information regarding the Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, and will help ensure a minimum level of liquidity exists for such securities to minimize the potential for manipulation and allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

The Exchange has represented that it may halt trading during the day on which an interruption to the dissemination of the Intraday Indicative Value or the value of the underlying index or assets occurs, and that NASDAQ will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.¹⁵⁵ In addition, the Exchange has represented that if it becomes aware that the net asset value applicable to a series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, or Trust Units is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.¹⁵⁶ The Commission believes that the proposal is reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Commodity-Based Trust Shares, Equity

¹⁵⁵ See Notice at 6848. A similar requirement is contained in the proposed rules relating to Currency Trust Shares, Commodity Futures Trust Shares and Trust Units.

¹⁵⁶ See Notice at 6848 - 6849. A similar requirement is contained in the proposed rules relating to Currency Trust Shares, Commodity Futures Trust Shares and Trust Units.

Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, and to maintain a fair and orderly market for such securities.

c. Surveillance

The Exchange has represented that trading of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units on NASDAQ will be subject to FINRA's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Trust Certificates on NASDAQ.¹⁵⁷ In addition, the proposed rules require NASDAQ to implement written surveillance procedures for Commodity Futures Trust Shares.

d. Other Provisions

The proposed rules impose additional reporting requirements, trading restrictions and books and records obligations on Members acting as registered Market Makers in Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units. The Commission believes that such restrictions, reporting and record-keeping requirements are reasonably designed to promote a fair and orderly market for Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, and will assist the Exchange in identifying situations potentially susceptible to manipulation.

NASDAQ has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, the proposed rules prescribe

¹⁵⁷ See Notice at 6848.

prospectus delivery requirements for purchasers of each newly issued series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units and Trust Units. Further, the Exchange has represented that prior to the commencement of trading in a series of Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading such securities.¹⁵⁸

The Commission notes that NASDAQ's proposed listing standards for Commodity-Based Trust Shares, Equity Gold Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Trust Units are substantively identical to the listing standards for such securities on NYSE Arca.¹⁵⁹ As such, the Commission believes that the proposed listing standards for these securities present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

3. Managed Trust Securities

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of Managed Trust Securities are consistent with the Act. The Commission believes the Exchange's proposal to list and trade Managed Trust Securities will benefit investors by increasing competition among markets that trade Managed Trust Securities. The Commission notes that it has previously approved the adoption of listing standards for Managed Trust

¹⁵⁸ See Notice at 6847.

¹⁵⁹ See NYSE Arca Equities Rules 8.201 (Commodity-Based Trust Shares), 5.2(j)(5) (Equity Gold Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), and 8.500 (Trust Units).

Securities on NYSE Arca.¹⁶⁰

a. Listing and Trading Rules

The Commission finds that NASDAQ's proposal contains adequate rules and procedures to govern the listing and trading of Managed Trust Securities. Prior to listing and/or trading on the Exchange, NASDAQ must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Managed Trust Securities. All Managed Trust Securities listed and/or traded on NASDAQ will be subject to the full panoply of NASDAQ rules and procedures that currently govern the trading of equity securities on the Exchange including, among others, rules and procedures governing trading halts, surveillance procedures, disclosures to Members, customer suitability requirements, and Market Maker obligations. For the initial listing of each series of Managed Trust Securities, the Exchange must establish a minimum number of Managed Trust Securities required to be outstanding at the commencement of trading. In addition, the Exchange must obtain a representation from the issuer of Managed Trust Securities that the NAV per share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

For continued listing of each series of Managed Trust Securities, the Intraday Indicative Value must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Trust Securities trade on the Exchange. Further, the Disclosed Portfolio must be disseminated at least once daily and made available to all market participants at the same time. The Exchange may also consider the suspension of trading in, or removal from listing of, a series of Managed Trust Securities if: (i) following the initial twelve-

¹⁶⁰ See Securities Exchange Act Release No. 60064 (June 8, 2009), 74 FR 113 (June 15, 2009) (SR-NYSEArca-2009-30) (approving listing standards for Managed Trust Securities).

month period after commencement of trading on the Exchange of a series of Managed Trust Securities, (A) the trust has fewer than 50,000 securities issued and outstanding, (B) the market value of all securities issued and outstanding is less than \$1,000,000, or there are fewer than 50 beneficial holders of such series for 30 or more consecutive trading days; (ii) the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time; (iii) the trust has failed to file any filings required by the Commission or if the Exchange becomes aware that the trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the trust with respect to the series of Managed Trust Securities; or (iv) such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Commission believes that the proposed initial and continued listing and trading standards for Managed Trust Securities are adequate to ensure transparency of key values and information regarding the securities, and will help ensure a minimum level of liquidity exists for such securities to allow for the maintenance of fair and orderly markets. In addition, the Exchange will have flexibility to delist a series if circumstances warrant such action.

b. Dissemination of Information

The Commission finds that the Exchange's proposed rules with respect to trading halts should help ensure the availability of key values and information relating to Managed Trust Securities and to prevent trading when a reasonable degree of transparency cannot be assured. Under the proposal, if the Intraday Indicative Value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption of such value persists past the trading day in

which it occurred, the Exchange must halt trading no later than the beginning of the trading day following the interruption.¹⁶¹ In addition, if the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Trust Securities is not being disseminated to all market participants at the same time, the Exchange will halt trading in such series of Managed Trust Securities until such time as the NAV or the Disclosed Portfolio is available to all market participants.

c. Surveillance

Pursuant to the proposed rules, NASDAQ will implement written surveillance procedures applicable to Managed Trust Securities. The Exchange has represented that trading of Managed Trust Securities on NASDAQ will be subject to FINRA's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Managed Trust Securities on NASDAQ.¹⁶²

d. Other Provisions

NASDAQ has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.¹⁶³ In addition, the proposed rules require that: (i) if the trust's advisor is affiliated with a broker-dealer, the broker-dealer must erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio; (ii) personnel who make decisions on the trust's portfolio

¹⁶¹ If a series of Managed Trust Securities is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series, as specified in NASDAQ Rules 4120(a) or (b), as applicable. See NASDAQ Rule 4120 (setting forth rules regarding trading halts for certain derivative securities products).

¹⁶² See Notice at 6848.

¹⁶³ See Notice at 6848.

composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable trust portfolio; and (iii) the Reporting Authority that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio. The Commission believes that the proposed “firewall” restrictions applicable to Managed Trust Securities are reasonably designed to prevent the use and dissemination of material, non-public information regarding the Disclosed Portfolio, prevent conflicts of interest with respect to personnel of a broker-dealer maintaining the Disclosed Portfolio and to promote fair and orderly markets.

The proposed rules prescribe prospectus delivery requirements for purchasers of each newly issued series of Managed Trust Securities. In addition, the Exchange has represented that prior to the commencement of trading in a series of Managed Trust Securities, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Managed Trust Securities.¹⁶⁴

The proposed rules impose additional reporting requirements, trading restrictions and books and records obligations on registered Market Makers in Managed Trust Securities. The Commission believes that such restrictions, reporting and record-keeping requirements are reasonably designed to promote a fair and orderly market for Managed Trust Securities, and will assist the Exchange in identifying situations potentially susceptible to manipulation.

The Commission notes that NASDAQ’s proposed listing standards for Managed Trust Securities are substantively identical to the listing standards for Managed Trust Securities on

¹⁶⁴ See Notice at 6847.

NYSE Arca.¹⁶⁵ As such, the Commission believes that the proposed listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

4. Currency Warrants

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of Currency Warrants are consistent with the Act. The Commission believes the Exchange's proposal to list and trade Currency Warrants will benefit investors by increasing competition among markets that trade Currency Warrants. The Commission notes that it has approved the adoption of listing standards and related rules for Currency Warrants on the New York Stock Exchange ("NYSE") and NYSE Arca.¹⁶⁶

a. Listing and Trading Rules

The Commission finds that NASDAQ's proposal contains adequate rules and procedures to govern the listing and trading of Currency Warrants. Prior to listing and/or trading on the Exchange, NASDAQ must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Currency Warrants, and the listing of Currency Warrants will be considered on a case-by-case basis. The Exchange has represented that Currency Warrants are deemed to be equity securities, thus rendering trading in Currency Warrants subject to the Exchange's existing rules governing the trading of equity securities.¹⁶⁷

The Commission is satisfied with the Exchange's development of specific listing criteria

¹⁶⁵ See NYSE Arca Equities Rule 8.700.

¹⁶⁶ See Securities Exchange Act Release No. 34-36165 (Aug. 29, 1995), 60 FR 46653 (Sept. 7, 1995) (SR-NYSE-94-41) (approving the listing and trading of currency warrants on the NYSE). See also Securities Exchange Act Release No. 59886 (May 7, 2009), 74 FR 22779 (May 14, 2009) (SR-NYSEArca-2009-39) (amending NYSE Arca Equities Rule 8.3 (Listing of Currency and Index Warrants)).

¹⁶⁷ See Notice at 6848.

for Currency Warrants. As described more fully above, the proposed listing criteria include minimum tangible net worth and earnings requirements for issuers. These criteria are, in part, intended to ensure that the issuer has enough assets to meet its obligations under the terms of the warrant and should help to reduce systematic risk. The proposed listing criteria also include minimum holder, distribution and market value requirements, which should serve to establish a minimum level of liquidity for each series of Currency Warrants to allow for maintenance of fair and orderly markets.

b. Dissemination of Information

The proposed rules provide that trading on NASDAQ in any Currency Warrant shall be halted whenever NASDAQ deems such action appropriate in the interests of a fair and orderly market or to protect investors. Trading in Currency Warrants that have been the subject of a halt or suspension by NASDAQ may resume if NASDAQ determines that the conditions which led to the halt or suspension are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading. In addition, the Exchange has represented that it may halt trading in a series of Currency Warrants during the day on which an interruption to the dissemination of the Intraday Indicative Value or the value of the underlying currency occurs, and that NASDAQ will halt trading no later than the beginning of trading following the trading day when the interruption began if such interruption persists at that time.¹⁶⁸ The Commission believes that the proposal is reasonably designed to promote the timely and fair disclosure of useful information that may be necessary to price the Currency Warrants appropriately, and to prevent trading when a reasonable degree of transparency cannot be assured.

c. Surveillance

¹⁶⁸ See Notice at 6848.

The Exchange has represented that trading of Currency Warrants on NASDAQ will be subject to FINRA's surveillance procedures for derivative products, and that the Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Currency Warrants on NASDAQ.¹⁶⁹

d. Other Provisions

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the Exchange has proposed to apply its options customer protection rules to Currency Warrants. In particular, the Commission notes that Currency Warrants will only be sold to options-approved accounts in accordance with NOM Rules, Chapter XI, Section 7. In addition, the Exchange will apply the options rules for suitability, discretionary accounts, supervision of accounts and public customer complaints to transactions in Currency Warrants, and that Members participating in Currency Warrants shall be bound to comply with the Communications and Disclosures rule of FINRA.

The proposed rules establish reporting requirements for Members holding large positions in Currency Warrants. The Commission believes that such reporting requirements are reasonably designed to promote a fair and orderly market for Currency Warrants, and will assist the Exchange in identifying situations potentially susceptible to manipulation.

NASDAQ has represented that it has a general policy prohibiting the distribution of material, non-public information by its employees.¹⁷⁰ In addition, the Exchange has represented that prior to the commencement of trading in a series of Currency Warrants, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated

¹⁶⁹ See Notice at 6848.

¹⁷⁰ See Notice at 6848.

with trading the Currency Warrants.¹⁷¹

The Commission notes that NASDAQ's proposed listing standards and regulatory requirements relating to Currency Warrants are substantively identical to the listing standards and regulatory requirements for Currency Warrants listed and traded on NYSE Arca.¹⁷² As such, the Commission believes that the proposed listing standards present no unique or novel regulatory issues and, for the reasons discussed above, are reasonably designed to protect investors and the public interest.

C. Additional Representations

As discussed above, the Exchange has represented that the Subject Securities are deemed to be equity securities, thus rendering trading in the Subject Securities subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

- (1) The Exchange has appropriate rules to facilitate transactions in the Subject Securities during all trading sessions.
- (2) The Exchange's surveillance procedures applicable to derivative products are adequate to address any concerns about the trading of the Subject Securities on NASDAQ. The Exchange may obtain information via the ISG from other exchanges who are members or affiliates of the ISG.
- (3) The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

¹⁷¹ See Notice at 6847.

¹⁷² See NYSE Arca Equities Rules 8.3 (Listing of Currency and Index Warrants), 8.4 (Account Approval), 8.5 (Suitability), 8.6 (Discretionary Accounts), 8.7 (Supervision of Accounts), 8.8 (Customer Complaints), 8.9 (Prior Approval of Certain Communications to Customers), 8.12 (Trading Halts or Suspensions), and 8.13 (Reporting of Warrant Positions).

- (4) To the extent a Subject Security holds investments in futures contracts, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.
- (5) Prior to the commencement of trading, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Subject Securities. Specifically, the Information Circular will discuss the following: (a) the risks involved in trading the Subject Securities during the Opening Process and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated and, if applicable, the risks involved in trading the Subject Securities during the Regular Market Session when the Intraday Indicative Value may be static or based in part on the fluctuation of currency exchange rates when the underlying markets have closed prior to the close of NASDAQ's Regular Market Session; (b) the procedures for purchases and redemptions of the Subject Securities (and/or that the Subject Securities are not individually redeemable); (c) NASDAQ Rule 2310, which imposes suitability obligations on Members with respect to recommending transactions in the securities to customers; (d) how information regarding the Intraday Indicative Value is disseminated; (e) the requirement that Members deliver a prospectus to investors purchasing newly issued Subject Securities prior to or concurrently with the confirmation of a transaction; and (f) trading information.

- (6) NASDAQ may consider all relevant factors in exercising its discretion to halt or suspend trading in the Subject Securities. Trading in the Subject Securities may be halted because of market conditions or for reasons that, in the view of NASDAQ, make trading in the securities inadvisable. These may include: (a) the extent to which trading in the underlying asset or assets is not occurring; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.¹⁷³
- (7) Prior to the commencement of trading of any inverse, leveraged, or inverse leveraged Subject Securities, NASDAQ will inform its Members of the suitability requirements of NASDAQ Rule 2310 in the Information Circular.¹⁷⁴ The

¹⁷³ In addition, trading in the Subject Securities will be subject to trading halts caused by extraordinary market volatility pursuant to NASDAQ's "circuit breaker" Rule 4120(a)(11) or by the halt or suspension of the trading of the current underlying asset or assets. If the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets (e.g., securities, commodities, currencies, futures contracts, or other assets) is not being disseminated as required, NASDAQ may halt trading during the day in which such interruption to the dissemination occurs. If the interruption to the dissemination of the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets persists past the trading day in which it occurred, NASDAQ will halt trading no later than the beginning of the trading day following the interruption. In addition, if NASDAQ becomes aware that the net asset value with respect to a series of the Subject Securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

¹⁷⁴ Specifically, Members will be reminded in the Information Circular that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such Member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the securities. In connection with the suitability obligation, the Information Circular will also provide that Members must make reasonable efforts to obtain the following information: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such Member or registered representative in making recommendations to the customer.

Information Circular will also reference, among other things, the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged exchange-traded products and options thereon. Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices.

This approval order is based on all of the Exchange's representations. The Commission again notes that the proposed listing standards for the Subject Securities are substantively identical to previously approved listing standards for the corresponding products on NYSE Arca.¹⁷⁵

The Commission believes that the proposal should help to facilitate the listing and trading of additional types of exchange-traded products that should enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the Commission believes that the listing and trading criteria for the Subject Securities set forth in amended Rule 5710 and proposed Rule 5711 are reasonably designed to protect investors and the public interest, as discussed herein. For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.¹⁷⁶

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷⁷ that the

¹⁷⁵ See supra notes 109, 116, 129, 138, 145, 152, 159, 165, and 172.

¹⁷⁶ 15 U.S.C. 78f(b)(5).

¹⁷⁷ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NASDAQ-2012-013), as modified by Amendment No. 1 thereto, be,
and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated
authority.¹⁷⁸

Kevin M. O'Neill
Deputy Secretary

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